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ABSTRACT

This K-12 handbook is designed for law and justice professionals who serve as resource persons and for classroom teachers in working with resource persons. The book consists of four parts. The introduction provides an overview, explains use of the handbook, presents information on using the community as a teaching resource, and provides a checklist for a classroom visit. Part II explains a variety of strategies designed to actively involve students. Strategies include case studies, mock trials, moot courts, brainstorming, dilemmas, surveys, police activities, and field trips. For each strategy, procedural guidelines, instructions for implementation, and several law-related examples are outlined. The third section includes activities for programs focusing on introduction to law, individual rights, criminal law, and civil law. The sections on individual law and civil law are broken down into the subcategories of freedom of speech, search and seizure, family law, and environmental law. The activities in both Parts II and III include 65 reproducible student handouts. Part IV suggests additional resources such as print materials for students, teachers, and resource persons; media kits; and filmstrips, games, and simulations. (KC)

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LAW IN THE CLASSROOM

Activities and Resources

By Mary Jane Turner

Social Science Education Consortium
ERIC Clearinghouse for Social Studies/Social Science Education
Boulder, Colorado
1979

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PREFACE

This handbook was developed in an effort to provide practical assistance to resource persons who will be making presentations about law and the justice system in school and organizational settings. Our decision to sponsor this publication reflects our belief that involving community resource persons in legal-education programs can provide enriching and rewarding learning experiences for all participants: students and other citizens are enriched by the opportunity to interact with people who work every day in the justice system, and resource persons are rewarded by the knowledge that they have helped expand the horizons and perceptions of learners of all ages.

This published edition of the handbook is based on earlier versions of a sourcebook originally developed by the Colorado Legal Education Program (CLEP), which was established in 1974 by the Colorado Bar Association and the Social Science Education Consortium with financial support from the Law Enforcement Assistance Administration and the Colorado Department of Education. During the four years of its existence, CLEP helped more than 40 school districts in Colorado design and conduct community-based legal-education programs. In 1978 the project acquired a broader geographical scope and a new title: Civic/Legal Education Program. The author of this handbook, Dr. Mary Jane Turner, has been codirector of CLEP since its inception.

We hope that teachers, program leaders, and law-education resource persons will find this handbook to be a useful and valuable tool for helping students and adult citizens understand the nature and value of the legal system.

James E. Davis

Associate Director, Social Science
Education Consortium

Associate Director, ERIC Clearinghouse
for Social Studies/Social Science Education

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Many of the activities included in this handbook have been used in legal-education workshops conducted by the staffs of the Social Science Education Consortium and the Civic/Legal Education Program (formerly the Colorado Legal Education Program). Others were selected on the basis of recommendations and feedback from classroom teachers. Susan K. Hustleby, who spent a sabbatical year serving as a teacher associate with the SSEC, provided extensive help in identifying and selecting materials and activities.

Members of the Colorado Bar Association, in particular A. Bruce Campbell and the Youth Education Committee, helped develop the idea for and plan earlier versions of the handbook. John D. Hoge, staff evaluator for the SSEC, is responsible for the feedback form that provided evaluation data on earlier drafts. Ann Williams edited the manuscript and Cherie Kuhn typed and assembled the reproduction copy for the final version of the book.

Finally, we thank the Hon. David W. Enoch of the Colorado Court of Appeals and James E. Davis, associate director of the SSEC and director of the Civic/Legal Education Program, for their guidance and leadership throughout the process of compiling and preparing this handbook.

Mary Jane Turner

Boulder, Colorado
May 1979

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Part 1: INTRODUCTION

How to Use This Handbook

This handbook is designed to be a practical resource for attorneys, judges, law-enforcement officers, probation specialists, paralegal counselors, parole officers, juvenile-justice specialists, private security officers, and others who may find themselves faced with invitations (or obligations) to visit classrooms or community groups and present programs about the law.

Please note that we used the phrase "present programs about the law" rather than "talk about the law." There's nothing wrong with talking about the legal system or one's personal role in it; indeed, most students and other groups expect to hear about personal experiences from an outside resource person and would be disappointed if such anecdotes were not forthcoming.

However, to equate the role of a law-education resource person with that of a mere speech-giver would be unfortunate for at least two reasons. First, many people dread the very idea of giving a speech, and thus might be reluctant to participate in a community-based legal-education program. And second, people of all ages are likely to learn more--and have a better time doing so--when they are participating in a learning experience that requires their active mental, emotional, and perhaps physical involvement.

To many adults who have not spent much time in a classroom for a generation or more, it may come as a surprise that the traditional teaching modes of "read/recite" and "lecture/discussion" have been joined by a host of new strategies and techniques. Such strategies as games, role plays, values-clarification dilemmas, and simulated trials or hearings are appropriate and effective for teaching about law and the justice system.

Although classroom teachers are likely to be familiar with most of these strategies, attorneys or police officers may not even be aware that such options exist. Furthermore, even if they are familiar with some of these strategies they might not be willing or able to devote the time required to plan the activity, assemble the necessary materials and equipment, and make whatever other preparations are necessary for using them with student or community groups.

This handbook contains scores of activities that can be readily and immediately used by law-education resource persons. When student handouts are required, they are supplied here; they need only be duplicated by the resource person or teacher. For many activities, step-by-step procedures for presentation are suggested. In addition to descriptions and examples of 17 different learning strategies, we have provided information about their effectiveness with groups of various ages and levels of sophistication. Finally, we have suggested strategies that are especially appropriate for dealing with various kinds of content.

This initial part of the handbook contains introductory and background material for both the teacher and the resource person. We recommend that this section be read before any of the activities are used.

Part 2 of the handbook contains descriptions of and guidelines for using a variety of learning strategies, along with examples of each. For most strategies, at least one example of an activity suitable for use with elementary students is provided. (These are identified in the Table of Contents by the letter "E" in parentheses.)

Part 3 consists of activities that are effective for use with different types of law content. Four major content categories have been identified: introduction to law, individual rights, criminal law, and civil law. The sections on individual rights and civil law have been further broken down into such subcategories as freedom of speech, search and seizure, family law, and consumer law. At least one activity appropriate for elementary students has been provided for most of these subcategories. (Here again, the latter are identified by an "E" in the Table of Contents.)

The last part of the handbook consists of additional sources of information about print and nonprint materials for presenting programs about the law to school and community groups.

As the many permission credits in the footnotes attest, very few of these activities and resources were developed originally for this handbook. Most are reprinted (in many cases with adaptations) from other publications. For some of the otherwise valuable materials that lacked teaching suggestions, we asked experienced curriculum writers to develop classroom procedures and discussion questions. (The complete addresses of all the publishers of "borrowed" materials are provided in Part 4.) The fact is that a great number of excellent resources and activities for legal education have already been developed and published; however, while these resources are generally accessible to teachers, they may be unfamiliar to professionals in the field of law and justice. Our intent was not to produce new materials but to assemble some of the best existing resources in a useful and usable format for law-education resource persons.

Finally, we need to address an implicit question: Can classroom teachers use this handbook themselves? Of course they can, and we expect that many will. However, there is no doubt that many of the activities in this handbook can be presented *most effectively* by a judge, sheriff's deputy, or some other person who is involved on a day-to-day basis with the legal system. It is our hope that a teacher will make an effort to arrange for such a resource person to visit the classroom at least once during each semester. (Your local bar association or police community-relations department may already have such a program in place; for other suggestions about locating human resources, see the section entitled "The Community as a Teaching Resource.") The teacher's knowledge about the ability and maturity of students, the content and objectives of the curriculum unit, and the effectiveness of various kinds of learning strategies with a particular class will be indispensable in helping a resource person identify appropriate activities, content, and strategies.

After looking over this handbook, the resource person may find some additional ideas for activities or strategies that sound particularly well suited to his or her own personality and interests.

The suggestions and procedures provided here are intended to be useful. They are also intended to be modified or even ignored, according to the user's disposition. Our goal is to contribute toward making community-based law education an enriching and enjoyable experience for the student, the teacher, and the resource person.

Background for the Teacher

This section contains a general rationale for using resource people to enrich classroom or community law-education programs, along with some suggestions for making the experience pleasant for both the resource person and the audience.

It is important to remember that such a venture will be successful only to the extent that the resource person is considered to be an integral part of the learning program and is made aware of the objectives being sought, the backgrounds and ages of the audience, and their general level of experience.

It is not unusual for attorneys and law-enforcement officers who agree to work with classroom or community groups to be asked simply to "come in and talk about the law." However, we believe that it makes more sense to structure a presentation than to go in and "open it up for questions." Although the latter approach may be fun for students, it seldom produces real insights into the nature or function of law. It can also be tedious for resource people because they are invariably asked to deal with such items as (1) "My brother was stopped for speeding the other night and the cops frisked him. Is that legal?" and (2) "The coach made my buddy run four laps around the football field. Does he have the right to do that?"

Teachers and program chairmen who want to use visits from resource persons to complement their own law-related education efforts should plan to spend some advance time planning and discussing these special presentations. The teacher or leader can be particularly helpful in suggesting appropriate strategies and activities. A resource person may be very knowledgeable about law-related content but unfamiliar with options for presenting that content in a way that is lively and interesting for both the audience and the presenter.

The activities in this sourcebook provide models and procedures for teaching about law-related content by means of inquiry, discussion, case studies, simulations, games, debates, role playing, dilemmas, value clarification, and other strategies consistent with good social studies methodology. With some guidance from the teacher or leader, a resource person should be able to find in these pages suggestions for presenting almost any type of content about law and the justice system to an audience of any age.

THE COMMUNITY AS A TEACHING RESOURCE

Community-based education is an important part of the school curricula, one that affects all children. Children from low-income families need to see their immediate environment as part of the educational process. Children from more affluent homes also need to learn to tolerate a learning environment that differs from their home environment. All children, in fact, can benefit from a glimpse of life beyond the schoolyard. If children are going to perceive the school and the community as rich sources of learning, a systematic effort in community-based education is necessary.

Community-based education is already part of social studies curricula. Special attention, however, needs to be devoted to the use of law-focused education as part of community-based education, because it has special potential to enhance such a program.

Community-based education can be used as one component of law-focused curricula or as an important basis of instruction in itself. There are advantages to using community-based education in either way. First, there is little cost attached to community-based education. Second, community-based education has an immediacy that textbook materials lack. Finally, and perhaps most important, is the fact that community-based materials and resources have a special reality for students. The word *community*, broadly construed, can include municipal government, county government, state government, and federal government.

Community-based educational materials and resources for classroom use are many and varied. Among them are field trips, resource persons, materials from special-interest agencies and groups, newspapers, and materials from libraries. In the study of law in the schools, emphasis is usually placed on the study of government and its legal relationship with individuals. Thus, constitutional law and the criminal justice system are the two subjects covered most frequently in materials produced for law-focused education. There remains, however, a significant gap in the area of personal or private law. Laws and legal processes related to consumers, housing, family, negligence, and insurance are areas in which much information is still needed. Possibly the most appropriate materials for teaching about important topics are community-based materials.

Reprinted with permission from "Community-Based Education," by Roger M. Berg, in *The Methods Book: Strategies for Law-Focused Education*, by Arlene F. Gallagher (Chicago: Law in American Society Foundation, 1978); pp. 99-115.

METHODS

As illustrated by Chart 1, the social studies have cognitive and affective contents.

The cognitive content is a group of facts drawn from everyday life that can be used to support the concepts drawn from the social sciences. Factual data and concepts are joined to make generalizations about human behavior. In turn, these facts, concepts, and generalizations are tied together by models or ideas that may include a number of concepts and generalizations. For example, the Cold War as a model contains concepts and generalizations from psychology, economics, political science, history, and geography.

Along with cognitive content from the social sciences, there are preferences or emotional responses. These are the affective content.

The methodology of community-based education uses numerous strategies from social studies. In the social studies, learning may be accomplished through the use of one or more of the following: inquiry, case studies, simulations and games, discussions, debates, role-playing, dramatic play, values clarification, and values analysis. These are Socratic dialogue, a special form of discussion used in graduate legal education; the case study method, a particularly effective way to use real and hypothetical legal cases to arrive at certain conclusions; the mock trial, an elaborate role-playing simulation; and moot court, a debate process used in legal education.

Law-focused social studies methods and social studies methods have many common elements. The cognitive content of law-focused social studies is drawn from the social sciences, especially from jurisprudence. Cognitive content includes facts, concepts, generalizations, and ideas or models. The criminal justice system is an example of an idea or model that draws its concepts and generalizations from jurisprudence, as well as from the other social sciences.

The affective domain of law-focused education, based largely on the experiences a person brings to a subject, also includes a set of beliefs, attitudes, and values about cognitive content.

RESEARCH AND COMMUNITY-BASED EDUCATION

Law-focused, social-studies curricula persons should look at the work of Jean Piaget, a Swiss psychologist; Lawrence Kohlberg, a Harvard University psychologist, and body of research known as political socialization. Fifty years ago, Piaget began his pioneering work in the development of children's thinking and how the child sees his world. Much of today's research is based on his original ideas. Based partly on Piaget's work on moral development, Lawrence Kohlberg began his research in the area of development of moral judgment. Kohlberg's ideas about stages of moral development are thought to be particularly important in teaching children about law.

Political socialization is an area being investigated by child psychologists and political scientists. It is a catchall phrase used to describe the process by which children are socialized, that is, by which they learn about the political culture in which they live. This culture includes government, authority, voting, and international relations, among other things. How children's thinking has developed, how they develop a sense of right and wrong, and how they learn about government and laws should all be

CHART 1: SOCIAL STUDIES METHODS

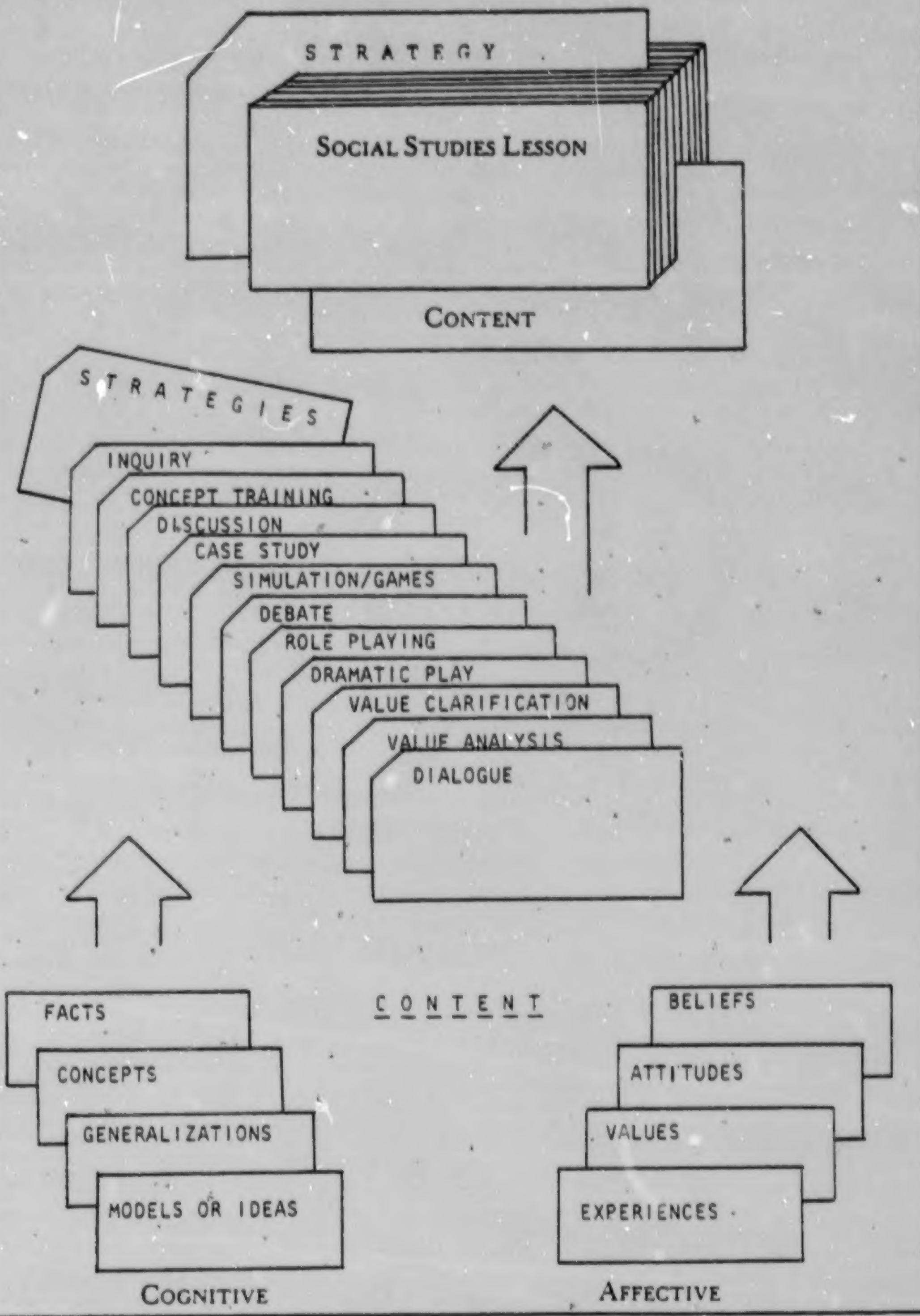
STRATEGY
SOCIAL STUDIES LESSON
CONTENT
STRATEGIES
INQUIRY
CONCEPT TRAINING
DISCUSSION
CASE STUDY
SIMULATION/GAMES
DEBATE
ROLE PLAYING
DRAMATIC PLAY
VALUE CLARIFICATION
VALUE ANALYSIS
DIALOGUE
CONTENT
FACTS
CONCEPTS
GENERALIZATIONS
MODELS OR IDEAS
BELIEFS
ATTITUDES
VALUES
EXPERIENCES
COGNITIVE
AFFECTIVE

Chart illustration: Charles Suttlee/Wendy Thorsen © 1976, Roger M. Berg considered in planning law-focused social studies curricula and the use of community resources within such curricula.

In his research with young children, Jean Piaget discovered that, in thinking about objects, events, themselves, and others, children tended to see themselves as the center of their own universe. In fact, at a certain age of development, infants believe that things exist only insofar as they can see them. Out-of-sight objects are literally out-of-mind and do not exist for infants. Slowly, children begin to develop a sense of reality. They realize that moving branches do not make the wind blow. They learn that they cannot grasp the moon, that they are not the center of the universe. This is a slow process. Piaget did not believe that children actually developed a capacity for logical deductive thought until they reached senior-high-school age. At that point, the deductive reasoning stage is completed.

Lawrence Kohlberg and his associates at Harvard University, as well a number of researchers in social studies education, have done work to establish the validity of the hypothesis that there are six stages of moral development. These stages can be described as follows:

Stage 1 is the "caught/don't get caught" stage. The consequences of an act tell a child if the act is right or wrong. If someone has the capability of punishing, he or she should be feared for his or her power. The avoidance of punishment or seeking of pleasure are most important.

Stage2 is the "fair for me" stage. Here, a child always makes sure he gets what belongs to him, and he only helps someone if that person can help him. Good deeds are done with the hope of reward.

Stage 3 is the "good boy" and "good girl" stage, wherein the child tries to please those he or she sees in face-to-face situations. The child wants everyone to think that he means well. Conforming to the behavioral norms of a particular group is typical at this stage.

Stage 4 has been called the "law and order" stage. A child follows the rules because they are the rules. Here one is concerned with the opinion of unseen others. Typically, the question this person asks is, "What will they think of me?"

Stage 5 is the social contract stage. Here, one balances individual rights against those of society. The operating notion is that the law changes to accomodate varying social conditions. This is the operating stage of the government, the Constitution, and the Supreme Court.

Stage 6 is the universal principles stage. Principles are self-chosen and include the Golden Rule and the categorical imperative. The civil disobedience of Martin Luther King, Jr. is an example of stage 6 behavior.

In sum, Kohlberg has developed a system by which a teacher may begin to understand differences in students' thinking. This system can be used to understand how they think about law and government.

During the primary grades, one finds large percentages of stage 1 behavior, some stage 2 behavior, and a small amount of stage 3 behavior. At age ten, in the intermediate grades, one finds mainly stages 1 and 2, with a little more stage 3 and some stage 4 behavior. During the junior-high age, one can observe a reduction of stages 1 and 2 behavior, and during the senior high age, one sees a dramatic increase in stage 5 behavior, which is largely moral development. This brief analysis has implications for content, methods, and the use of community-based educational resources.

Thousands of children have been questioned about their perceptions of government, the presidency, the Supreme Court, and Congress. It is important to note that most of a child's political ideas seem to be fixed by the end of the eighth grade. This is not to say that some change does not occur; however, the ideas and concepts held in later life are already learned. Young children also tend to personalize government. The president, a police officer, and a teacher are all personal images of authority. It is only later when children begin to mature cognitively that they understand the notion of institutions of government.

The foregoing personalization process is no surprise to experienced elementary school teachers, yet provisions for this insight need to be made in teaching law-focused social studies. A second insight gained from political socialization has to do with the idea of identification. This notion is based on the tendency of children to identify with attitudes and values of significant persons. These persons include teachers, parents, and others worthy of respect in the eyes of a child. Identification, as well as personalization, can be taken into account when planning the use of community resources for law-focused education.

Political socialization data also emphasize that the growing crisis of confidence in government begins in the elementary school. During the intermediate grades, respect for government, police, and legitimate authority in general begins to decline in students' eyes. There is some evidence, however, that an honest and thoughtful attempt at law-focused social studies can redirect a child's growing sense of alienation from political institutions.

CHART 2:
CONTENT OF LAW-FOCUSED SOCIAL STUDIES

Grades	K-3	4-6	7-9	10-12
Local	X	X	X	X
County		X	X	X
State		X	X	X
Federal			X	X

CHOOSING CONTENT BASED ON GRADE LEVEL

Chart 2 indicates those levels at which content might best be utilized for law-focused education. Community-based education can also be introduced at the same levels.

CHART 3: COMMUNITY-BASED EDUCATION IN A LAW-FOCUSED SOCIAL STUDIES CURRICULUM

Grades	K-3	4-6	7-9	10-12
Resource persons	X	X	X	X
Class field trips	X	X	X	X
Organizations			X?	X
Individual field trips				X
Materials – government	?	X	X	X
Materials – organizations		X?	X	X

Chart 3 shows some ways to incorporate community-based education into law-focused social studies curricula. The chart affirms that resource persons and field trips are profitable at any age. Some thought is needed in the use of other community-based resources and materials. A number of organizations for community-based resources will be suggested later in this chapter. These organizations would be useful for focusing on legal or value conflicts in the society; however, it is suggested that senior organizations be used with mature junior or senior high school students. Because many community organizations do not attempt to provide balanced points of view, they must be used judiciously. For the same reason, materials provided by trade associations or special-interest and other advocate groups should be used only in the junior and senior high schools. Materials from the government can probably be used with intermediate grade students and junior and senior high school students. The only consideration in their use is readability. One advantage of the use of community-based education in the senior high school is that tenth to twelfth graders should be able individually to visit organizations, resource persons, or places and report back to the rest of the class.

CHART 4: COMMUNITY-BASED EDUCATION IN THE PRIMARY GRADES

	K-3
Resource persons	X
Class field trips	X
Organizations	
Individual field trips	
Materials – government	
Materials – organizations	

PRIMARY GRADES K-3

Community-based education in the primary grades is important, since there are few printed materials available. The selection of resource persons and field trips should be determined by ideas gained from Piaget, Kohlberg, and others in political socialization research. In general, children at this age tend to personalize government and its agencies. They also tend to be at stage 1 and stage 2 of development, and hence, they have external norms for right and wrong. Thus, they should be presented with resource persons who are authority figures. Discussing how other people feel or the rules of society is not always effective with children at this age. As Piaget's ideas suggest, a child must begin to decenter cognitively. Other Piagetian research indicates that learning at this level must begin with familiar persons and local places.

Thus, the simplest kind of field trip might be a neighborhood walk during which traffic signs, safety signs, street signs, sidewalks, fire hydrants, and other familiar objects are observed. Later, they become the basis of stories showing how rules for the safety and welfare of citizens are made by local government and carried out by local agencies. A visit to a local fire station and a meeting with fire fighters might also be beneficial. The notion of fire safety is an important one. A visit to the police station may be particularly impressive. Since police are seen by children of this age group as the main source of enforcing laws and applying sanctions, they are usually held in high esteem.

The K-3 level of law-focused education might well be summarized as follows: We live in a world of rules to protect us. That world of rules is managed by adults, and the rules are made by them.

CHART 5:
COMMUNITY-BASED EDUCATION IN THE INTERMEDIATE GRADES

	4-6
Resource persons	X
Class field trips	X
Organizations	
Individual field trips	
Materials – government	X
Materials – organizations	X?

INTERMEDIATE GRADES

At the 4-6 grade level, one notices a marked change from the previous age group. This age group has begun to assume attitudes from peers as well as from parents. Respect for the police remains high, and respect for government in general is extremely high. When someone in government does something wrong or a national leader dies, children in this age group become upset and display anxiety about the general support and permanence of the political system. Piaget tells us that, at this age, students can understand part-to-whole relationships. Although most primary children would not be able to conceptualize neighborhood, city, county, state, and federal relationships, at this age, students can apply part-to-whole relationships to government. Moral-development research shows that, at this age, more students start to think about the feelings of others, i.e., they use stage 3 reasoning. Nevertheless, stage 1 (caught/don't get caught) and stage 2 (what is fair for me or the law of retaliation) behavior is still extant. A small number of students will be reasoning at stage 4. The intermediate grades are a transitional stage in which children are beginning to internalize previously external attitudes and rules. They are beginning to gain a picture, however fuzzy, of the complex regularities and irregularities of government and human behavior.

Children at the intermediate level assume the following focus: People around me make the rules and carry them out. These rules regulate my immediate environment. I should take part in maintaining the system. I should know how to become part of the rule-making process. I have to think about the other person.

Primary-grade experiences with resource persons or field trips can easily be repeated at this level. One focus should be on authoritative adults who enforce rules. However, other foci could be consideration for the feelings of others and the idea that, since we all have a hand in making the rules, we all have to obey them. Key persons visited on field trips, as well as resource persons, should be briefed to understand the psychology of the children so their talks can be offered on this level. Career awareness is an important consideration to be included. At this level, children can begin thinking about the world of work and the many different occupations that are open to them. Resource persons could talk about how they trained for their positions, the schooling that was involved, the relationship of their education to their work, and related occupations in the same field.

The following is a list of possible resource persons who might be asked to address a class or, at the intermediate grade level, two or three classes at once. With older intermediate children, some consideration should be given to having resource persons make a short, ten-to-fifteen-minute explanation of their occupation and what it means in the local world of rules and laws. This presentation could be put together on audio cassettes or videotapes for use by other classes or in later years. Such a resource library would be particularly useful for planning units of study.

A list of suitable resource persons follows:

Police officer
Fire fighter
Principal
Safety patrol captain
4-H club leader
Sheriff
Mail carrier
Librarian
Physical education instructor
Scout leader
Security guard at local shopping center
County human-relations office representative
Neighbors of the school building

A police officer could emphasize bicycle safety, giving students greater responsibility for enforcing bicycle safety with their friends. Similarly, a fire fighter might talk about the student's role in making sure homes are safe and in protecting younger children from fires.

Since after-school activities are important at this age, Scout, 4-H, or Campfire Girl leaders, as well as professionals in community agencies, are significant adults in a child's life. These persons could explain that in their organizations, young people make and enforce rules for themselves. The influence of such organizations in building a sense of voluntary compliance in children is particularly important. Unfortunately, these youth organizations often provide more opportunities for student participation in decision-making and rule-making than do schools.

Neighbors who could visit include security personnel or local store owners. At this age, students sometimes become involved in shoplifting and other minor crimes. If store personnel would talk about punishment as well as the feelings of others, it might have some impact upon children. Having a face-to-face relationship with a store owner also could deter students from petty theft.

Personal relationships with persons who live in the immediate vicinity of the school can also help to avoid complaints about student misbehavior. These persons should have a chance to be known personally. They can talk about the fact that they understand that children like to play, but suggest that it would be much better if children played around their own homes. They could stress their own feelings and appeal to the children's sense of property.

County officials should also be included at this grade level. A representative of the sheriff's office or a representative from the county human-relations commission might be effective resource persons. The sheriff might be able to demonstrate vividly the layers of government; i.e., that in addition to local police, there are also county law enforcement officials. Such a person could talk about how the state, rather than the city, prosecutes most criminals.

CHART 6: COMMUNITY-BASED EDUCATION IN THE JUNIOR HIGH SCHOOL

	7-9
Resource persons	X
Class field trips	X
Organizations	X?
Individual field trips	
Materials – government	X
Materials – organizations	X

JUNIOR HIGH SCHOOL

The junior high school student begins to reason differently about himself and the world. Piaget's investigations with children demonstrate that, at this age, students begin the process of hypothetical-deductive reasoning. Kohlberg's research shows that half the children are beginning to think in terms of right and wrong, as well as in terms of what others think of them. Some are even beginning to use principles of judgment. Nevertheless, a third of these students are still rather authoritarian in their orientation to right and wrong, and this must be taken into account in the use of community resources. Political-socialization research shows that, by this time, many basic orientations toward law and government have solidified. At this stage, students benefit from learning that inquiry is open-ended, that answers are never quite complete. If efforts are made to continue to show students that social issues are complex and require solutions based upon reflective judgment, then community-based education will be well employed. If community-based education can be seen as a source for citizen decision making, rather than as authoritative learning to be accepted without question, then a true spirit of law-focused social studies inquiry can be fostered.

At the junior high level, community-based education includes field trips, resource persons from organizations, materials from government agencies, and materials from organizations. All of these must be used with an eye to appropriate content, strategies, and psychology.

Resource persons for the junior high level should provide appropriate role models for students. Since the identification process is particularly important at this level, persons should be chosen who will be attractive to students at this age level. Young adults can be especially helpful to this identification process. Resource persons should be models from whom students might adopt attitudes toward the institutions of our society. They could also be persons who can talk about their careers and other careers in their field, permitting students to gain some notion of the education required, entry skills needed, skills needed to progress, and opportunities for promotion. The following is a short list of suggestions:

Traffic officer
Principal
Store security person
Consumer protection agency representative
State patrol trooper
State legislator
Juvenile officer
School neighbors
Court reporter
State inspector
Driver's license examiner
State department of labor representative

This list is not meant to be all-inclusive. Some federal representatives could also be added, depending upon the interests of the class and the direction of the content. Resource persons from the federal level are listed in the discussion of community resources in the senior high school section.

Class field trips on this level should emphasize state or federal governments. The state legislature and the governor's office would be important places to visit. At the local level, a visit to a driver's license examination center would, no doubt, be popular.

Visits to the state patrol, department of labor and workmen's compensation offices are also appropriate.

Because of the impressionable nature of the junior high school student, the use of special interest organizations can be particularly difficult. It is suggested that they be used judiciously or not at all for students at this level. A list of organizations from which a teacher might choose is found in the discussion of community resources on the senior high level.

Printed community-based educational materials at the junior high level can be anything the teacher selects. Materials from the state and federal governments -from virtually any organization the teacher chooses—can be used. Materials can be discussed and analyzed objectively at this age level as long as the teacher uses thoughtful criteria for their utilization. Students should begin analysis of materials by examining the conflicting points of view. Careful examination and analysis nurture the development of stage 5 reasoning. Materials from state and federal agencies are particularly useful supplements to the materials used in teaching about the U.S. Constitution.

CHART 7: COMMUNITY-BASED EDUCATION IN THE SENIOR HIGH SCHOOL

	10-12
Resource persons	X
Class field trips	X
Organizations	X
Individual field trips	X
Materials – government	X
Materials – organizations	X

A thoughtful use of community-based education at the senior high level demands a look at the accumulated research. The senior high school student must also be viewed as a potential voter, eligible to cast a ballot in either the next local or congressional race, and surely in a not-too-distant presidential race.

An important consideration discussed by Piaget and his associates is the fact that, although students at this level are capable of hypothetical-deductive reasoning, they frequently engage in single-value logic. For example, they see disparities between the rich and poor as the root cause of most problems, or they label race as the cause of most problems in American society. Endless and ingenious elaborations of a single model or idea are developed by students at this age; most essay answers reflect this single-value logic. More mature students will apply hypothetical-deductive reasoning and use a hierarchy of values rather than a single value.

Political socialization research shows that, at this age, some students are even looking beyond the federal level to the international level. It is hoped, of course, that teachers will encourage such a cosmopolitan view. Community resources can help.

At this level, more students reason from principles than make moral judgments along authoritarian lines. Most students operate at stage 5 reasoning. Stage 6 reasoning is not fully developed until the mid-twenties. Consequently, stage 5 reasoning is an important focus in law-related social studies at the senior high level.

Political socialization data indicate that students are learning from a variety of sources and, although the school may provide a much-needed conceptual language, it is not the most important agent of political socialization at this stage. The peer group and the world outside school loom larger than does the school for many students.

Despite the fact that the school is no longer the principal agent of socialization, there are some positive steps that can be taken. Significant persons, including parents, may still be used to provide positive identification with society's institutions. Some attitudes are still plastic, and care should be taken not to encourage or increase cynicism. Students should be introduced to the idea that problems require more complex solutions than they once thought. In a democratic society, most solutions are trade-offs that involve a definite social cost. If one regulates industrial pollution, for example, certain industries are placed at a competitive disadvantage. The balancing of freedom, equality, and justice requires the reflective vigilance and participation of all citizens.

The following list is not meant to be all-inclusive but merely to serve as a guide to appropriate resource persons.

Welfare case worker
FBI agent
Police officer
Legal aid lawyer
Public defender
Probation officer
Parole officer
Building inspector
Banker
Real estate agent
Lawyer in private practice
Military lawyer
Ex-offender
Weights and measures inspector
Apartment lessor
Law student
University social scientist

In addition to the above, representatives of various federal agencies might also be appropriate. Representatives from the following are suitable:

Federal Trade Commission
Federal Communications Commission
Civil Aeronautics Board
Department of Agriculture
Internal Revenue Service
Consumer Products Safety Commission
Law Enforcement Assistance Administration
Department of Labor
Department of Housing and Urban Development
Drug Enforcement Agency
Interstate Commerce Commission
Atomic Energy Commission
Food and Drug Administration
National Highway Traffic Safety Administration
Environmental Protection Agency
Postal Service
Small Business Administration
Department of Health, Education and Welfare
Department of Commerce

All of these agencies play an important role in the area of administrative justice. They often issue regulations that, until tested in the courts, have the force of law. They often seek to regulate various aspects of business, public utilities, and even personal behavior. Values that shape their policies are worthy of discussion. Almost all of these agencies have regional offices, and they will often send or recommend speakers. If they do not have a speaker available, they will often send information.

At the senior high level, the ideal field trip might be the traditional visit to Washington, D.C. A tour of a federal court building or federal office building can also make students aware of the panoply of federal powers that exist in virtually every state. Certainly, all courts in which senior high students are allowed are possible sites of class visits.

Organizations that provide materials or resource persons can be utilized so that a juxtaposition of opposing points of view results. The following list offers some suggestions:

Young Republicans v. Young Democrats
Right to Life v. Planned Parenthood
National Rifle Association v. Gun Control Group
Sierra Club v. local power company
Organic foods store v. major supermarket chain
School prayer advocate v. ACLU representative
Anti-busing representative v. Legal Aid representative
Union representative v. Right to Work representative
School board member v. teacher's union member

If such experiences are tied to a moot court or mock trial activity, students can gain deeper understanding of a particular topic in a law-focused social studies unit.

Materials available from federal agencies or other official sources, as well as special-interest groups, can be a particularly useful supplement to text materials for students at this age level. These materials can be analyzed so that students gain practice in making decisions, stating the reasons for their decisions, and seeing the implications of their decisions. As students prepare to exercise their franchise, more and more of the materials used in class should be those that actual citizens use rather than text material. It is here that community resources can have their greatest impact.

USING A RESOURCE PERSON

First, be sure to follow the guidelines of your school system for the use of resource persons and community resources in general. Teachers have found that resource persons are more effective if they are given some background about children's interests. A resource person may have a wonderful presentation, but if it does not meet the children's interests, it will fail. A resource person should also have some idea of the class's knowledge of the particular topic. Tell the resource person what your objectives are and the objectives of the unit you are teaching. The resource person also needs to know the attention span of the children. A good pattern to suggest is a short presentation to be followed by an informal question-and-answer period.

There are some steps a teacher can take before having a resource person visit a class. First, provide some background study on the resource person's topic. Help children select some appropriate questions to ask this person. With younger children, it might be effective to assign questions to individual students. While preparing the class, do not stifle spontaneity. If you expect your resource person to be natural, you should allow the children to be natural.

Do not expect resource persons to be teachers. They do not have your training or background, and you may occasionally have to step in to handle a situation. In general, though, children are excellent audiences; they love to have visitors and are flattered and seldom misbehave when visitors are present.

It is a good idea to have students or a committee of students write a thank-you note. This might include a summary of what the resource person told the class, which also functions as an evaluative technique.

USING FIELD TRIPS

As in the case of resource persons, be sure to follow local school policy in the use of field trips. A teacher gains a better sense of the way to proceed by visiting in advance the places that a class will visit. Older students may go on extended, all-day, or even week-long field trips. Younger students may become tired after an hour or two, no matter how exciting the subject matter. Thus, in the case of younger students, arrange a series of short visits if one will not cover the topic. Also, whenever possible, request speakers who are elected officials. They are often more verbal and have a better sense of audience than other government officials.

When visiting a court building, ask a lawyer which courtrooms are best to visit on that particular day. Try to visit in advance the clerk of the court or a court building administrator; either can be helpful in organizing the trip. If you intend to visit a particular courtroom, again try to schedule an advance visit to speak with the judge's own clerk or bailiff. It is also a good idea to write the judge, so he knows that a class will be visiting. Even if you have planned a visit to a courthouse and have two or three people available to help, make sure the students have a good experience. Be ready for surprises. It may be that the judge you had expected to be on the bench is sick that day or has had an emergency calendar change. If so, be open to a change in plans. Do not be surprised if a judge stops a case to explain it to your class or takes extra time outside the courtroom to meet your students. In general, judges are concerned that students understand and respect the law and are willing to do anything they can to help teachers in this kind of effort.

Field trips are an important community-based activity. A visit to a central police station, central post office, or a central fire department is particularly appropriate as a follow-up to the local classroom visit made during the primary grades. Students should also have an opportunity to see the differences between city and county offices. A county zoning board, a county health office, or the county sheriff's office are especially good places to visit at this level. Having a chance to see city and county elected officials at work and to gain some ideas of the differences in their functions is most appropriate.

Community-based printed materials can be used in conjunction with field trips. Local government organizations often have pamphlets, and other groups will have suitable information for schools. Through such material, students begin to see sources other than textbooks, as worthy of study. However, a word of warning is in order in regard to materials from outside organizations. Groups that represent only one point of view, and this includes trade associations as well as obvious special interest groups, must be dealt with circumspectly. Schools often have an opportunity to receive free printed materials, filmstrips, and films from special-interest groups. Such materials must be used carefully with young children because they are so impressionable. They tend to accept such materials as fact because they are presented in the school environment. A balanced point of view should be given at all times, so teachers must be very careful about using special-interest materials.

USING INDIVIDUAL FIELD TRIPS

Individual field trips are recommended only for senior high students. These field trips can take place during the school day in schools with an open-campus policy, or they can occur after school. The purpose of individual field trips is to gather materials from specific organizations and interview members of those organizations. Such field trips give committees of students first-hand experience at evaluating other people's views. The students could use a tape recorder, and the tape could be shared with the entire class.

When using individual field trips to special-interest organizations, a teacher must be prepared to handle two situations. The first and simplest problem is that students sometimes return as converts who proselytize for a specific organization's point of view. The second and most difficult situation occurs when students return from such a visit and scoff at an organization and its viewpoint. One way to handle the second problem is to arrange individual field trips as preparation for moot court arguments. (A second benefit of this arrangement is that committees in moot court exercises develop arguments with the help of special interest organizations that they might not have developed on their own.) Students should also try to do more than just gather information about an organization's point of view if they are expected to marshal that information into effective and winning arguments.

USING COMMUNITY-BASED MATERIALS

Printed materials from government organizations can be used in the intermediate grades and in junior and senior high school. Materials from special-interest organizations should be limited to the junior and senior high school. In general, teachers should encourage students to draw their own conclusions about the reliability of these materials and to recognize their limitations. Students at the junior and senior high levels should learn to evaluate and compare materials from a variety of sources. An important skill for any citizen is the ability to synthesize information from several sources. Secondary school students need practice and guidance in detecting evidence of bias and propaganda. Certainly, senior high school students should be given practice in determining the underlying values in the presentation of facts and opinions and in the materials that different organizations provide the schools.

Printed materials are often sources for case studies. A second use is to develop the material as background information for debates.

SUMMARY

A number of observations have been made about the use of community-based education in law-focused social studies curricula. Community-based resources are more important in law-focused curricula than in general social-studies curricula. Research by Piaget, Kohlberg, and political-socialization scholars can contribute to the use of community-based education in law-focused social studies curricula. Community resources include field trips, resource persons, special-interest organizations, governmental organizations, and individual field trips. Finally, community-based education can be tailored to the maturity and needs of the students.

CHECKLIST FOR A CLASSROOM VISIT

Here is a checklist of suggested procedures that should help ensure a successful classroom visit by a resource person. The key to success is to share information and ideas with your guest as far in advance as possible and to plan ahead for whatever special materials and equipment will be needed. This checklist can be adapted to fit a field-trip situation.

A. Briefing the resource person

1. Characteristics of the class or group (age, grade level, size, socioeconomic background, legal and political sophistication) ____
2. Context of presentation (topics currently or previously studied, where this presentation fits in, goals and objectives of presentations) ____
3. Restrictions and special considerations (amount of time available, size and setup of room, availability of special equipment, presence in the group of students with physical or other impairments) ____
4. Appropriate or preferred instructional strategies (lecture, lecture/discussion, panel discussion, debate, role-play, mock trial, case study, games, other) ____

B. Arranging for materials and equipment

5. Print materials (titles and quantities needed, whether duplication will be required, arrangements for necessary duplication) ____
6. Nonprint materials (slides or filmstrips that might need to be ordered or reserved, any necessary audiovisual equipment, newsprint pads, marking pens, etc.) ____

C. Preparing the class

7. Readings or handouts that might need to be read and discussed before the visit ____
8. Questions that need to be prepared in advance by students or teacher ____
9. Procedures for special strategies (role play, mock trial) that require advance explanation or discussion ____

D. Planning for follow-up activities

10. Consultation with resource person about follow-up or extension activities and debriefing techniques or evaluation procedures. ____

Adapted with permission from *Involvement: A Practical Handbook for Teachers* (Carroll County Public Schools and Maryland Bar Association, 1976).

Background for the Resource Person

The idea of using lawyers and law-enforcement officers as human learning resources in classrooms or organizational programs is not a novel one. Many attorneys have participated in law-day programs or spoken to community groups about the justice system. Many police and sheriffs' officers have visited schools, youth groups, and neighborhood associations to talk about their work and about the necessity for citizens to cooperate with and support law-enforcement agencies.

However, in most such cases the contribution of the resource person is confined to standing up before a group and giving a formal or informal speech--a prospect that may be intimidating to even the most-seasoned veteran of a law-enforcement agency, if not to a trial lawyer. While there certainly is value in listening to attorneys and police officers talk about their work, students can often learn more if they are involved in a structured learning strategy that requires their active participation. Such a strategy might be a debate, a mock trial, a game, or a role-playing activity. The bulk of this handbook consists of suggestions and procedures for using these and other learning strategies to present various kinds of law-related content. The subsection entitled "How to Use This Handbook" explains the organization of the book and the location of materials related to particular strategies and content areas.

Whatever the strategy or content selected, resource persons will benefit by keeping the following general teaching tips in mind.

Getting and Keeping Interest

Whether an audience consists of elementary students, teenagers, or adults, a resource person should be aware that people are invariably most interested in events and issues that touch their lives personally. One way to make a theoretical concept more engaging is to present it in the context of a controversial local issue or a situation relevant to the world of the school or classroom.

Establishing and Maintaining Credibility

Many people have preconceived ideas and possibly negative feelings about attorneys, law-enforcement officers, probation specialists, and other people in law-related occupations. In many cases these negative prejudices stem from the conviction or suspicion that the so-called justice system is anything but just--a belief that may not be without grounds, given personal experiences with the system. Resource persons need to be extremely careful to avoid projecting the impression that the legal and justice system that prevails in this country is perfect, that there is no room for improvement either in conception or in administration. Overt or implicit criticisms of the system should be met, not by defensive arguments, but by the admission that there are inequities both in the system itself and in its administration. However, the resource person should emphasize the point that it is the right and responsibility of all citizens to work toward reforming and correcting these inequities. One of the major goals of the resource person's presentation should be to get across the idea that the law is a dynamic evolutionary force that often responds to public and community pressures.

Do's and Don't's for Resource Persons

Don't:

--Lecture at students.

--Use jargon or unfamiliar words.

--Come across as being condescending or omniscient.

--Let yourself get angry at heckling or passive unresponsiveness.

--React defensively to criticism about the legal system or your role in it.

--Read a prepared speech.

--Talk in a monotone.

--Assume that students or participants either have or lack knowledge about a given point (check it out).

Do:

--Consider the ages and experiences of students or participants.

--Prepare yourself adequately.

--Maintain eye contact.

--Solicit feedback frequently.

--Encourage active participation by members of the audience.

--Be yourself; let your personality show; come across as a real human being.

Part 2: STRATEGIES

Case Studies

GUIDELINES FOR USING CASE STUDIES

In using legal case studies with students, attorneys and other resource people must be careful to use terms and situations that are familiar to students. While it is useful for such resource persons to have basic grounding in law, the underlying issues and conflicts inherent in legal cases may be more important than the particular decisions or statutes involved. The following discussion, which was prepared for teachers, contains suggestions and guidelines for structuring case studies as well as a rationale for using them in a classroom setting.

* * * * * * * * * * * *

From the very beginning, the successful use of the case method approach to the study of law has involved three essential ingredients: 1) *lively* cases, 2) *capable* instructors, and 3) *involved* students. The selection of appropriate legal cases has been a crucial aspect of the approach. Not every case involving a legal decision or interpretation can be considered a "good" case. Cases that are chosen must center upon significant legal questions that persist and recur in human experience and the law. The cases must also pose a variety of possible alternative solutions and provide dramatic interest for the student.

The instructor, in turn, must be properly prepared and well informed on the subject if the approach is to be utilized successfully. The instructor must serve as a facilitator rather than as an authority figure in the learning process. Through the use of questioning, the instructor raises doubt in students' minds on a particular legal issue. This procedure helps to clarify student thinking and reasoning and assists the students in resolving the conflict. The instructor should judiciously avoid imposing conclusions or personal biases upon students. When a particular position has not been adequately considered, the instructor may express a point of view to the class, but it should be identified as such.

Finally, the active involvement of the student in analyzing a legal case is crucial to the approach. Participating in class discussions in which a particular legal problem is identified and sides are taken, points of view are stated, considered and weighed, and decisions are formulated and evaluated, remains the primary means by which students develop their own critical thinking ability. This is how an understanding of the law evolves from the case method of teaching.

The case study approach to the teaching of legal concepts and issues encourages teacher and students to engage in one or more of the following

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activities: (1) a statement or review of all the facts of a particular case; (2) an investigation or treatment of the issues and arguments of that case; and (3) an analysis or consideration of the decision, including the legal reasoning behind and implications of the ruling.

Case Method Activity Sequence

Step 1: Review of the Facts
  —What are significant facts in the case?
Step 2: Investigation of Issues/Arguments
  —What legal issues are involved?
  —What arguments might be presented?
Step 3: Consideration of Decision and Reasoning
  —What would you decide? Why?
  —What was the court's decision?
  —Why did the court come to that conclusion rather than another one?

As a discussion leader, an instructor utilizing the case method approach must provide the class with the necessary background information and materials they need. He or she should pose questions that encourage students to: (1) rationally examine a case—facts, issues, arguments, decision; (2) express and explore, as well as be able to explain and support, alternative points of view; (3) focus upon points of major importance and reflect upon the consequences of each; and, perhaps most important, (4) clarify their own thinking and values. Questions should promote the interchange of ideas among students and call for student thought rather than simple "yes/no" responses or the repetition of facts. The classroom questions should point out assumptions or weaknesses in reasoning, have a logical sequence or rational order, be clear and direct, and be within the answering capabilities of the students. In addition, questions should build on the class' preceding responses and ideas as well as its initial interests.

In addition to performing the roles of diagnostician and discussion leader, the teacher must act as a "climate-maker." That is, the teacher must develop and maintain a friendly, and non-threatening classroom environment in which students are encouraged to think logically, to consider alternatives freely, and to express themselves honestly while studying a case. In order to develop a favorable classroom atmosphere in which to use the case study approach, the teacher must refrain from dominating class discussion by repeating, commenting on, or asking questions of the same respondent following each remark. Rather, questions and comments should be redirected to other members of the group or class. Also, biases of the instructor regarding a case should be contained and when they are expressed, they should be clearly open to class review and analysis.

By capably serving as diagnostician, discussion leader, and "climate-maker" in the case study approach, the teacher plays a key role in the instructional process. In performing these functions, the teacher is the primary guide to productive learning about the law.

The procedures described below provide several examples of how legal cases might be used to promote discussion in the classroom. More specifically, these procedures are designed to (1) illustrate how the case approach lends itself to a variety of teaching styles and uses; (2) demonstrate how this approach encourages student thinking at the higher cognitive levels of analysis, synthesis, and evaluation; and (3) suggest several legal cases and concepts that might be examined by social studies classes.

One way in which an instructor can promote the study of a legal case is to provide the class with a handout describing the facts, issues, arguments, court reasoning, and decision. After asking several questions designed to test general comprehension of the information contained in the handout, the teacher should center the discussion on student evaluation of the decision. These procedures are outlined in Diagram 1 which follows:

DIAGRAM 1

Students Given Entire Case

Student Case Handout Includes:

1. Facts
2. Issues
3. Arguments
4. Reasoning
5. Decision

Class Discussion Centers On:

1. Ascertaining student comprehension of the facts, issues, arguments, decision included in handout.
2. Student evaluation of court decision and reasoning

A second way a teacher might use a legal case in the classroom is to give the students a handout describing only the facts, the issues, and the arguments. In contrast to the first set of procedures, the teacher asks the students to reach their own decision on the case in light of the arguments and facts presented to them in the handout. Finally, the actual court's decision and reasoning in the case is introduced and compared with the students' position. These procedures are outlined below in Diagram 2:

DIAGRAM 2

Students Given Only Case Facts, Issues, Arguments

Student Case Handout Includes:

1. Facts
2. Issues
3. Arguments

Class Discussion Centers On:

1. Ascertaining student comprehension of facts, arguments (included in the handout).
2. Student formulation and evaluation of court decision and reasoning.

An alternative strategy for encouraging class discussion of the court's decision and reasoning is to provide the students with a handout describing the facts, issues, and arguments of a case along with unmarked quotes taken from the majority decision and dissenting opinions. After posing several questions designed to test student understanding of the material contained in the handout, the teacher asks the students to select the opinion with which they most agree and to give reasons for their choice. These procedures are outlined in Diagram 3:

DIAGRAM 3

Students Given Unmarked Opinions

Student Case Handout Includes:

1. Facts, issues, arguments
2. Unmarked judicial opinions

Class Discussion Centers On:

1. Ascertaining student comprehension of the facts, issues, opinions
2. Student selection/justification/evaluation of court opinion

Perhaps the most challenging way in which a teacher can present a legal case to a class is to give the students only the facts of the case. Following some initial comprehension questions, the instructor asks the students to identify the issue(s) involved in the case, to develop arguments for both sides, and to decide the case on the basis of the arguments. This procedure is outlined below in Diagram 4:

DIAGRAM 4

Students Given Only the Facts

Student Case Handout Includes:

1. Facts

Class Discussion Centers On:

1. Ascertaining student comprehension of the facts (found in handout).
2. Promoting student identification of the issues, preparation of arguments, development of a decision, and evaluation of decision.

An alternative strategy to having the entire class develop arguments for both sides would be to divide the class into committees or "law firms" and have the firms prepare arguments for the plaintiff and defendant. Their arguments can then be presented to the class for consideration and discussion.

Although the case study approach has a number of distinct advantages for classroom use, it is not without its limitations as an instructional method. For example, the case approach assumes that the students possess certain background information and that they will be able to comprehend the facts of the case under consideration. If these two conditions are not fulfilled, a lesson based upon a case study would be unproductive and frustrating to both teacher and students.

In addition, the case method approach requires that students make independent judgments regarding a particular legal case, problem, or issue. Students must also permit their judgments to be scrutinized and challenged. As a result, they may exhibit an initial hesitancy and/or inability to study a legal case or to critique each other's views. If student inhibitions do arise, and temporarily impede the educational process, a teacher's patience and guidance is needed to override the problem.

STRATEGIES FOR HELPING STUDENTS DEAL WITH FACTS, ISSUES, DECISIONS, AND OPINIONS

This resource expands the basic case-study approach by suggesting additional ways to help students differentiate between facts and opinions. A case-study sheet and a form for briefing a legal case (Handouts 1 and 2) are also provided.

* * * * * * * * * * * *

Facts

Students should be asked to list the facts in a case. They should be made aware of the importance of this exercise, since everything else in the case hinges on an accurate accounting of the facts involved. The teacher can ask his students to enumerate them according to the following categories:

a. Uncontroverted facts--those not subject to challenge or dispute (students should point to specific citations in the case).

b. Implied or inferred facts--those which logically follow the uncontroverted facts (students should justify the inferences or implications they have made; they may not be right, but at least they should be reasonable assumptions).

c. Missing facts--other things, which one needs to know before reaching a decision, that were not stated in the case.

d. Important facts--as opposed to irrelevant or inconsequential facts.

A number of strategies can be used in presenting the facts. Sometimes the teacher may want to provide the students initially with only the facts, even though a case has been adjudicated, so that students are free to form their own opinions. The court decisions can be handed out later and a discussion held as to why student decisions differ from the court's verdict, if in fact they do.

Before class, the teacher could prepare a tape recording stating the facts of the case, and play it more than once in class to illustrate what really are uncontroverted facts. Did students perhaps hear the tape differently? A variation on this approach would be to use a few students to create a videotape or role play depicting the facts. This simulates a real-life situation because student witnesses to the facts must try to report them accurately, with possible conflicting testimony.

Issues

It is essential to zero in on the issues involved in a case, so that far-ranging bull sessions, which take up precious class discussion time, can be avoided. Issues can be phrased in terms of "whether or not"

Excerpted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 4-6.

statements. The resource person may have to exercise patience in stressing the need to adhere to the stated facts in the case and to the principal issue or issues. Students not only are being led toward a substantive conclusion but are also moving toward a wider awareness of the scope and limits of free expression.

A useful approach to a case study is to examine the question of *interested parties*. Law is a compromise of competing interests. Ask who the competing parties are in the outcome of a case. What is each person's or group's interest? (E.g., students, parents, school board, administration, civil liberties groups, community.) How would each one like the case resolved? Why? How can a decision be reached (if, in fact, that is possible) which takes into account all of these interests? To depict the balance of conflicting issues in the case, the teacher can also draw a set of scales on the blackboard or an overhead transparency and then visually weigh the arguments for the plaintiff and for the defendant as the students define them.

Decision and Opinion(s)

The *decision* in a case is a simple "yes" or "no" response to the central issue. Decision making is an everyday happening in law. It is a challenging lesson to students that a decision must be made to resolve the problem--someone will win and someone will lose. The decision not only affects the individual(s) involved, it also sets a precedent for future similar cases. The *opinion* must include both the reasoning or justification for the decision and an explanation of why the opinion disagrees with or can refute other points of view. This reasoning provides the student with an appreciation of precedent and an understanding of various legal concepts. Alert students to the possibilities for varying interpretations of the law by judges. As court opinions are read and discussed, distinctions should be noted between real statements of law and judges' expressions of "obiter dicta" (incidental or collateral opinions which are not necessary to support the decision and not binding). Also, there may be value in examining minority *dissenting* opinions (if the decision was not unanimous) or *concurring* opinions. Justices often write concurring opinions when they agree with the majority decision but for different reasons and wish to indicate that they might decide differently under other circumstances.

Handout 1

CASE STUDY SHEET

Student's Name ____________________
Course ____________________
Date ____________________

Case name ____________________
Court ____________________
Decision date ____________________

Facts:

Legal Issues:

Decision:

Court's Reasoning:

Student's Comment:

Reprinted with permission from *The Role of Law in Society and the Rights and Responsibilities of Citizenship: A Curriculum Guide for Kindergarten Through Grade 12* (Jefferson City, Mo.: Missouri Bar Association Advisory Committee on Citizenship Education and Missouri Department of Elementary and Secondary Education, 1976).

Handout 2

BRIEFING A LEGAL CASE

In briefing a legal case answer the questions below:

Case name ____________________

Who originated the suit? ____________________

Court giving ruling opinion ____________________

Decision Date ____________________

Facts -- Who did what to whom, where, when, what circumstances?

____

____

Legal issues or principles in initial trial

What are legal arguments of each side? ____________________

____

____

Action asked by plaintiff (or state) ____________________

____

____

Verdict of lower court ____________________

Appeal on what grounds? ____________________

Majority decision of court hearing final appeal ____________________

Reasoning on main issue or legal principle ____________________

____

Dissenting opinion and reasoning ____________________

____

Major significance of case

What legal standard on the issue was established/settled/developed? ____________________

____

Were precedents cited continued/changed/overturned? ____________________

____

What was significance of decision for the particular person or persons in the case? ____________________

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STRATEGIES FOR DISCUSSING LEGAL CASES

Cases, either real or hypothetical, can be discussed rather than analyzed using the case method. It should be noted that facts, issues, and opinions will emerge as students examine the cases.

* * * * * * * * * * * * *

Suppose you give a case like the following to your class:

Paul stole a valuable camera from William, following which Paul sold the camera to John. Paul then disappeared. William, upon seeing John with his camera, claimed the camera was his, whereas John claimed the camera was his since he had paid for it.

--What was the nature of the dispute between William and John?

--Did either William or John engage in antisocial or dishonest behavior?

--How should this dispute be resolved?

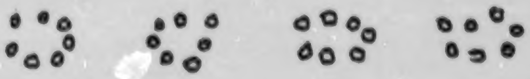
--What elements are essential to the resolution of the dispute?

How would you have the class discuss the case? Several ways are possible, a few of which follow:

1. Students could first think independently about the problem by writing their answers to the third question before any discussion begins. Then, in a class discussion, the teacher could draw from the class a variety of answers listing key features of different solutions on the board.

2. The teacher could divide the class into small groups, half of which would marshal reasons to support William's side and half of which would marshal reasons to support John's side. After ten minutes, the teacher would have groups take the opposite positions. The purpose of such a discussion is to help students understand that each side can marshal good reasons to support it. Following this method of discussion, the teacher could lead the entire class in a discussion of how such a dispute could be resolved and also prevented.

3. The teacher could use a "fishbowl strategy." First, the teacher breaks the class into four groups as shown below:



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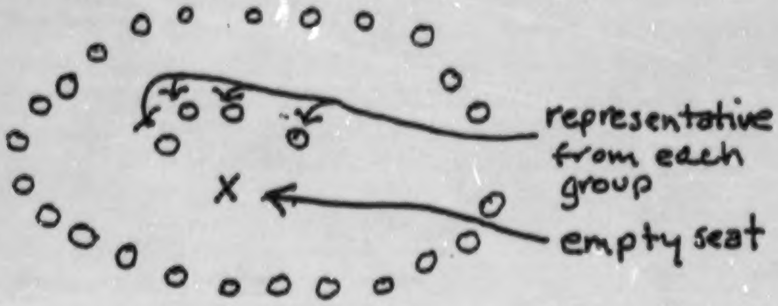
Each group would spend ten or more minutes discussing the above questions. Next, the teacher would have one representative from each group sit in the middle in the following manner:



The students in the fishbowl would then discuss the questions in front of all other students. Anyone who wished to participate in the discussion could temporarily enter the vacant seat and join in the conversation.

USING THE CASE STUDY APPROACH WITH ELEMENTARY STUDENTS

Most students in the elementary grades are not able to deal with the vocabulary in factual statements written for older students. Moreover, elementary students are likely to possess only rudimentary skills in analysis, synthesis, and evaluation, and they are often incapable of reasoning on a high abstract level. Thus, resource people who work in these grades will need to either present the background to them orally or give them greatly simplified fact situations.

The case of John and Mary Beth Tinker (see next page) is one that can be used effectively with elementary students. The outline below contains suggestions for presenting it and for helping students analyze it via the case-study approach.

Case Study Approach--Elementary Process*

1. Background (facts)	Teacher presents the background of the case to students.
2. Review of facts	Students identify and review the facts, clarifying the circumstances, terms, and characters in each case. For example, who was John Tinker? Where did the situation take place? What did John Tinker do? What did the principal do?
3. Investigation of issues	Students determine the issues that are raised in the case. For example, what are the interests of the school administration? What are the interests of the Tinkers? Does the First Amendment apply to wearing armbands? What interests are more important?
4. Consideration of decision and reasoning	Students examine the facts and issues and decide the case. For example, what do you decide? Why?

---

*Developed by Faith Haber Galbraith.

John and Mary Beth Tinker decided to wear black armbands to school. The school allowed students to wear symbols like political buttons, but the principal told the Tinkers they would not be allowed in school wearing armbands. They decided to go to school wearing the armbands anyway. Their armbands symbolized their protest of the Vietnam War. Some students just outside of the school got angry at John and Mary Beth for wearing armbands. The principal sent them home and refused to let them come back to school if they wore their armbands.

Should the Tinkers be allowed to wear armbands to school if they wish?

The Tinkers did not say any words of protest. Does the First Amendment apply to wearing armbands? Do you think it should? Why? Why not? Whose rights are in conflict here?

Note to teacher:

ISSUE:

What right should the law hold more important—the right of the Tinkers to express freely their ideas; or the right of the school to protect good order?

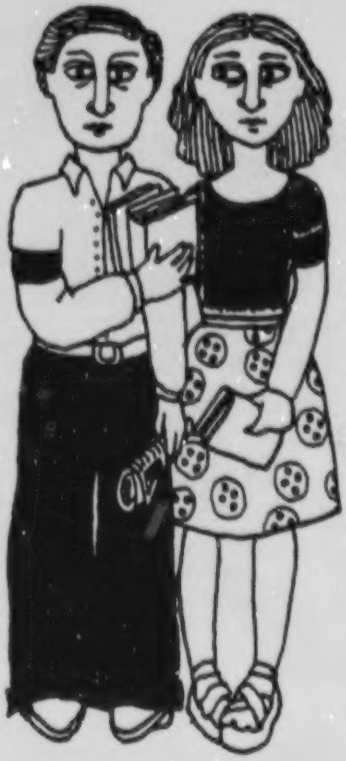
INFORMATION:

In Tinker v. Des Moines School District (1969) 393 U.S. 503 the Supreme Court ruled in favor of the Tinkers, since it was an orderly and symbolic expression of free speech.

Justice Fortas said:

"It can hardly be argued that either students or teachers shed their rights to freedom of speech or expression at the schoolhouse gate."

He stated also, "that any conduct by students which materially disrupts or causes a substantial disorder or invasion of the rights of others, is, of course, not protected by the Constitutional guarantees of freedom of expression."



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CASE STUDY USING COLLAGES

The most "far out" way to deal with case studies is one which involves the use of collages. This strategy works well with slow learners and students who are reluctant to participate in free-wheeling discussion sessions. A resource person who plans to spend several days in the classroom might want to use both a traditional and a nonverbal strategy.

It would probably be wise to check with the teacher to determine whether he or she believes students would respond well to this approach. Note that this activity requires some preplanning so as to obtain the necessary magazines, markers, glue, and so on.

1. Divide the class into three groups: a fact group, an issue group, and an opinion group.

2. Give each group a sheet of butcher paper or posterboard, a stack of magazines, glue and scissors, and the brief of a case.

3. Explain that each group will make a collage. Tell the students that a collage consists of words, pictures, or cartoons pasted on a large piece of paper in such a way as to give the feeling of being one large picture, and that the collage is supposed to portray feelings and/or a point of view.

4. Give the following instructions to each group

   a. Fact group: "Show the facts of the case with pictures, words, and cartoons."

   b. Issue group: "Show the issue of the case with pictures, words, and cartoons."

   c. Opinion group: "Show the majority opinion of the court or show how you would decide the case with pictures, words, and cartoons."

The class should be able to tell the facts, issue, and opinion of the case by looking at the collages.

5. Allow sufficient time for the students to read the case, talk to each other, decide what they should show on the collages, and make the collages.

6. Present the collages and discuss the case.

   a. Pass each collage around the room.

   b. Sit on the floor or close together so that everyone can see the collages easily.

   c. Ask the students to explain the collages, report what they see in the collages, and describe the feelings they get from the collages.

Adapted from an idea developed by Mike Stuart.

d. Make a list of the things students mention about the collages.

e. One thing you might do is let the two groups who *didn't* work on each collage talk about it first. Then ask the group that made the collage to explain it.

Mock Trials

GUIDELINES FOR CONDUCTING MOCK TRIALS

A mock trial is an enactment of a modified court trial in which students play the roles of persons in a court hearing. Through an adversary procedure, the judge and jury are called upon to decide the facts of a case and to match laws to the issues raised during the trial. A mock trial can be an effective exercise in critical thinking and decision making as well as a means of giving students experience with the functions of courts in the United States.

How to Proceed

1. Select a case (actual or hypothetical), or assist students in selecting a case, that raises issues or questions relevant to the objectives of the concept being studied.

2. Select and brief participating attorneys and judges.

3. Acquaint students with courtroom procedures and the roles of persons involved in the proceedings in advance of the actual mock trial, if possible.

4. Select students to role play the various people involved in the trial. For example:

    a. plaintiff (civil case) or victim (criminal case)
    b. plaintiff's counsel or prosecutor
    c. defendant
    d. defense counsel
    e. witnesses
    f. jury (juries)
    g. judge
    h. court officer or bailiff
    i. court reporter

These roles may be played by students or by volunteer judges and attorneys. In the latter case, students may serve as jurors, with the class divided into as many juries as are required to involve everyone. Each jury reaches its verdict after the case has been presented, and the verdicts are compared and discussed.

5. Provide students with a statement of the facts and relevant information about the case.

6. Provide time for preparation of testimony by witnesses and opening statements and examination questions by attorneys.

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7. Conduct the mock trial according to the following procedures, which have been simplified for use with teachers and students.

a. Opening of the court by the court officer or bailiff.

b. Selection of a jury (juries) as outlined in item 4 above.

c. Opening instructions by the judge.

d. Opening statements to the jury (juries) by the attorneys: first by the prosecutor or counsel for the plaintiff, then by the counsel for the defense. Opening remarks should state what each side hopes to prove. A time limit may be set on these statements.

e. Direct examination and cross-examination of the victim(s) (criminal case) or plaintiff(s) (civil case) and supporting witnesses: In a criminal case the victim is questioned first by the prosecutor and then by the counsel for the accused (defense). In a civil case the plaintiff is questioned first by his own counsel, then by the counsel for the defense. Each witness is sworn in by the court officer or bailiff as (s)he takes the stand.

f. Direct examination and cross-examination of the defendant and his/her witnesses: The defendant is examined first by his/her own counsel and then by the prosecutor or counsel for the plaintiff. Each witness is sworn in by the court officer as (s)he takes the stand.

g. Closing statements by attorneys: After the period of examination and cross-examination of witnesses, the prosecutor or counsel for the plaintiff and then the counsel for the defendant give closing arguments, during which both sides summarize their cases and attempt to convince the jury (juries) to make a decision in favor of their clients or positions.

h. Instructions to the jury: The judge instructs the jury on the relevant laws and directs them to retire and decide upon a verdict.

i. Jury (juries) deliberate: If possible, a lawyer or law student should be assigned to the jury (juries) as deliberations take place. His or her role is to function as a resource person and to raise pertinent questions to help participants focus on the objectives of the session.

j. The jury (juries) report(s) the verdict.

k. The judge receives the verdict of the jury (juries).

Principal Responsibilities of the Resource Person

1. Make certain that the case selected for the mock trial raises issues relevant to the objectives of the concepts being studied.

2. Assist with the coordination and support activities necessary to implement a mock trial, specifically:

a. If desired, procure a sufficient number of attorneys and law students and a judge to serve as trial participants and/or resource persons.

b. Make arrangements to use actual courtrooms, if desired.

c. Invite non-class members to attend, if desired.

d. Assign roles of those involved in the trial and determine how to make jury assignments.

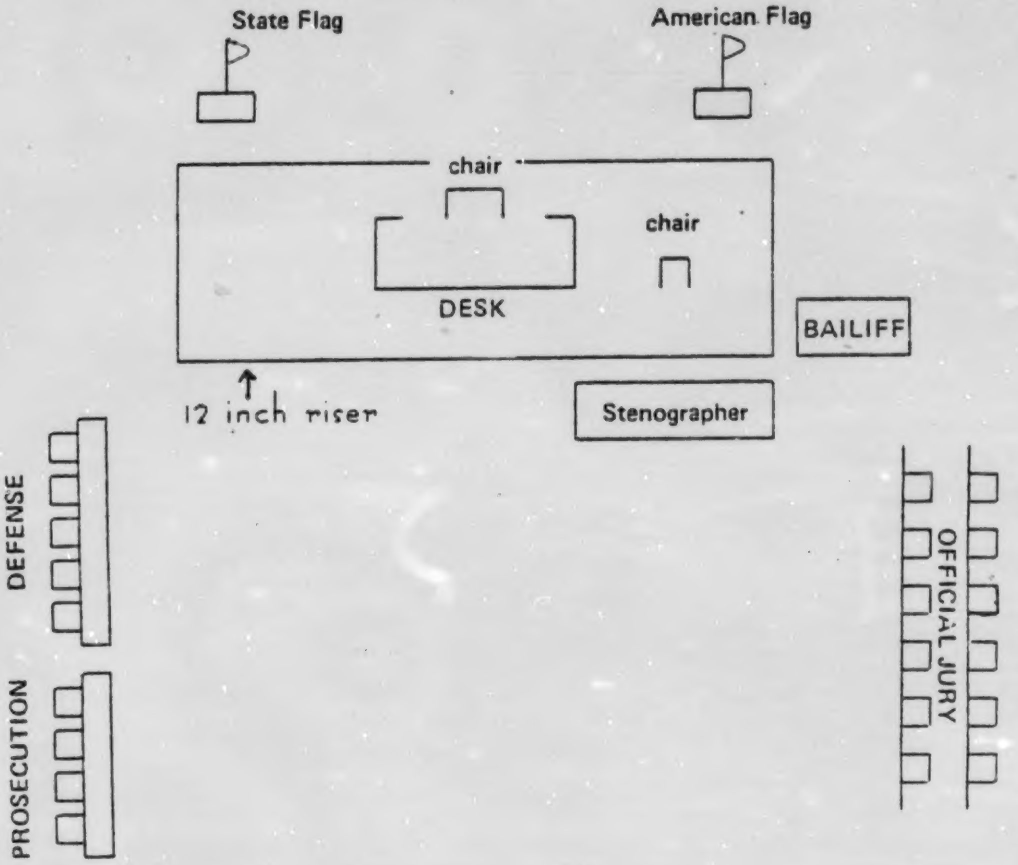
3. Make certain that students are familiar with mock-trial procedures and their roles.

4. Assist students in developing their roles or testimony when help is needed.

5. Oversee the conduct of the trial itself.

6. Conduct the debriefing session.

The resource person may wish to arrange the classroom in a fashion which suggests a courtroom.


State Flag
American Flag
chair
chair
DESK
BAILIFF
12 inch riser
Stenographer
DEFENSE
PROSECUTION
OFFICIAL JURY

Handout 3

HELPFUL HINTS FOR MOCK TRIAL PARTICIPANTS

Prior to conducting a mock trial in the classroom, the resource person may wish to reproduce the following "helpful hints" for students. The sheet may be handed out at the same time as the roles, facts, and documentation for the case being tried.

* * * * * * * * * * *

Opening Statement to the Jury: Prosecution or Plaintiff

1. Purpose:

To inform the jury of the nature and facts of the case. Argument, discussion of law, or objections by defense attorney or defendant are not permitted.

2. Include:

   a. Name of the case.
   b. Your name.
   c. Client's name.
   d. Opponent's name and counsel.
   e. The facts and circumstances that led to the case.
   f. Conclusion.

3. Avoid:

a. Too much detail. It may tire and confuse the jury.

b. Exaggeration and overstatement. Don't use such phrases as "prove it to a mathematical certainty" or "prove it absolutely beyond question."

d. Argument. It violates the function of the opening (which is to provide the facts of the case from your client's viewpoint), and you risk rebuke from the bench.

e. Anticipating what the defense attorney will say. It might result in a mistrial.

f. Walking or pacing. It distracts juries and irritates judges.

Opening Statement to the Jury: Defense

1. Purpose:

To deny that the prosecution or plaintiff has a valid case and, in a general way, to outline the facts from the standpoint of the defendant. Interruptions by prosecution or plaintiff are not permitted.

2. Give:

   a. Your name and your client's name.
   b. General theory of defense.

Excerpted with permission from *Mock Trial Manual* (Albany: New York State Bar Association, 1975), p. 18.

c. Facts that tend to weaken the plaintiff's case.
d. Conclusion.

3. Avoid:

a. Repetition of facts that are not in dispute.
b. A rundown of what each defense witness will testify to.
c. Exaggeration and argument.
d. Strong points of the plaintiff's case.
e. Walking or pacing. It distracts juries and irritates judges.

Direct Examination of Witnesses

1. Purpose:

a. To present the kind of evidence to warrant a verdict favorable to your client.
b. To present the facts with clarity and understanding; to convince the jury of the soundness of your client's case.
c. To present your witnesses to the greatest advantage; to establish their credibility.

2. Refreshing memory:

In the event that your witness's memory fails, you may refresh his or her memory by the use of the transcript.

3. General suggestions:

a. Avoid complex or long-winded questions; questions should be clear and simple.
b. Be a "friendly guide" for the witnesses as they tell their stories.
c. Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.

Cross-Examination

1. Purpose:

a. To secure admissions from witnesses that will tend to prove your case.
b. To negate your opponent's case by discrediting his/her witnesses.

2. Scope:

a. Witnesses may be cross-examined regarding their direct testimony. Cross-examination is used to explain, modify, or discredit what a witness has previously stated.

3. Approach:

a. Use narrow, leading questions.
b. Expose lack of sincerity.
c. Never ask "Why?" It gives a well-prepared witness a chance to kill you.
d. Generally don't ask questions unless you know what kind of an answer you are going to obtain. Fishing trips may be expensive.
e. Be fair, courteous; avoid the "isn't it a fact,..?" type of questioning.
f. It may be useful *not* to insist on an answer.

Handout 4

SAMPLE OATHS

Clerk to People in Court

Qualifying oath of jurors for the case at issue (before prospective jurors are examined by lawyers):

> You and each of you do solemnly swear that you will well and truly answer such questions as may be asked of you as to your qualifications to serve as a trial juror in the case now at issue; so help you God.

Oath of jury to try case (after 12-person jury is selected and court has convened):

> You and each of you do solemnly swear that you will well and truly try the case now at issue and a true verdict render according to the evidence; so help you God.

Oath of witnesses (before each first takes the stand):

> You do solemnly swear that your testimony in the case now at issue will be the truth, the whole truth, and nothing but the truth, so help you God.

Oath of bailiff (when leaving to deliberate):

> You do solemnly swear that you will keep this jury together in some private and convenient place and permit no one to communicate with them nor do so yourself unless instructed to do so by the court. Nor will you ask them if they have agreed upon a verdict, but return them into court when they have so agreed and ordered to do so by the court, so help you God.

Judge to Jury

Verdict (civil cases):

> Is this verdict as filed and read to you, the verdict of at least eight or two-thirds of your number?

Verdict (criminal cases):

> Is this verdict as filed and read to you, your verdict so say all twelve of your number?

Handout 5

JUDGE'S INSTRUCTIONS TO JURY (CRIMINAL CASE)

Ladies and gentlemen of the jury:

It is the duty of the judge to instruct the jury on the law applicable in this case, and it is your duty as jurors to follow the law as I shall state it to you.

The function of the jury is to try the issues of fact that are presented by the allegations in the information filed in this Court, and the defendant's plea of "not guilty." This duty you shall perform uninfluenced by passion or prejudice. You must not suffer yourselves to be biased against a defendant because of the fact that he or she has been arrested for this offense, or because any information has been filed against him or her, or because he or she has been brought before the Court to stand trial. None of these facts is evidence of his or her guilt, and you are not permitted to infer or to speculate from any or all of them that he or she is more likely to be guilty than innocent.

By no remark made by the Court during the trial, nor by these instructions, does the Court express any opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from the Court's instructions alone. You should not give any weight to statements of counsel or of anyone else as to what the law is, nor should you allow yourselves to decide this case contrary to these instructions, even though you might believe that the law ought to be otherwise. Counsel, however, are privileged to comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction, or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you, neither are you to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all of the instructions as a whole, and are to regard each in the light of all the others. The order in which the instructions are given has no significance.

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Duties of Jury in Considering Evidence

You are the sole judges of the credibility of all the witnesses who have testified in this case, and of the weight to be given their testimony. A witness is presumed to speak the truth; but this presumption may be repelled by the manner in which he or she testifies; by the nature of his or her testimony; or by the evidence affecting his or her character for truth, honesty, or integrity or motives; or by contradictory evidence. In determining the weight to be given to the testimony of any witness, you have a right to consider the appearance of each witness on the stand, his or her manner of testifying, his or her apparent candor or lack of candor, his or her apparent fairness or lack of fairness, his or her apparent intelligence or lack of intelligence, his or her knowledge and means of knowledge on the subject upon which he or she testifies, together with all the other circumstances appearing in evidence on the trial.

The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact in this case.

A witness false in one part of his or her testimony is to be distrusted in others.

The burden of proof exists upon the plaintiff throughout the trial to establish the guilt of the accused beyond a reasonable doubt, and a conviction is not warranted unless this burden is sustained.

A reasonable doubt is not such doubt as a man may start by questioning for the sake of a doubt, nor a doubt suggested or surmised without foundation in the facts or testimony. It is such a doubt only as in a fair and reasonable effort to reach a conclusion upon the evidence, using the mind in the same manner as in other matters of the highest and gravest importance, prevents the jury from coming to a conclusion in which their minds rest satisfied.

In so using the mind and considering all of the evidence produced, it leads to a conclusion which satisfies the judgment and leaves upon the mind a settled conviction of the truth of the fact by their verdict.

It is possible always to question any conclusion derived from the testimony, but such questioning is not what is termed a reasonable doubt. A reasonable doubt exists only in that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

You are instructed that all instructions given you in this case should be read and considered together, as a whole, each in the light of the other. The jury should not pick out some particular instruction and attempt to determine the law of the case from it alone, but must consider it in connection with other instructions given, if any, on the same point or question.

You are instructed that the burden of proof is upon the prosecution to establish every material allegation of the case to your satisfaction beyond a reasonable doubt. The defendant is presumed innocent until the contrary is proved, and in case of a reasonable doubt as to whether the defendant's guilt is satisfactorily shown, he or she is entitled to an acquittal.

The Court instructs the jury that a defendant in a criminal action cannot be compelled to be a witness against himself or herself, but he or she may be sworn and may tesitfy in his or her own behalf, and the jury in judging of his or her credibility and the weight to be given his or her testimony may take into consideration the fact that he or she is the defendant and the nature and the enormity of the crime of which he or she is accused.

Handout 6

JUDGE'S INSTRUCTIONS TO JURY (CIVIL CASE)

It becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose.

You must take the law from these instructions alone, and you should not give any weight to statements of counsel as to what the law is, except that counsel may argue and comment upon the law of the case as given to you in these instructions.

Statements of counsel are not to be regarded by you as evidence, and you will disregard any such statements which are not supported by the evidence received upon this trial.

Your power of judging of the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against either party to the action.

You are instructed that no act or remark or any interrogation or ruling by this Court is to be construed by you as being any indication whatever of any opinion of this Court as to what the facts are in this case, for that is solely a matter for the consideration of you, the jury.

If in these instructions any rule, direction or idea has been stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you, and for that reason, you are not to single out any certain sentence or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

Evidence of oral admissions of a party is to be viewed with caution.

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You are instructed that evidence is to be considered not only by its own intrinsic weight, but also according to the evidence which is within the power of one side to produce, and of the other to contradict; and therefore, that if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory could have been produced, the evidence offered should be viewed with distrust.

In your deliberations you will consider only the testimony of the witnesses upon the witness stand and such exhibits as have been admitted in evidence. No juror shall allow himself or herself to be influenced by anything which he or she may have seen or read outside of the evidence and exhibits received by the Court during the course of this trial.

In weighing the testimony of any witness, you should take into account his or her interest or want of interest in the result of the case, his or her appearance upon the witness stand, his or her manner of testifying, his or her apparent candor or want of candor, and whether he or she is supported or contradicted by the facts and circumstances as shown by the evidence. You have a right to believe all the testimony of a witness or believe it in part and disbelieve it in part, or you may reject it altogether as you may find the evidence to be. You are to believe as jurors under the instructions of this Court and the evidence what you would believe as men and women, and there is no rule of law which requires you to believe as jurors what you would not believe as men or women.

Every witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he or she testifies, by the character of his or her testimony, by evidence affecting his or her reputation for truth, honesty, and integrity, by his or her motives or by contradictory evidence.

As a matter of law, where two witnesses testify directly opposite to each other on a material point and are the only ones that testify on that same point, you are not bound to consider the evidence evenly balanced or the point not proved; you may regard all the surrounding facts and circumstances proved on the trial and give credence to one witness over the other if you think the facts and circumstances warrant it.

If you believe that any witness who testifies in this case knowingly and willfully testifies falsely concerning any matter or fact material to this case, his or her testimony should be distrusted by you as to all other matters and facts as to which he or she testifies. However, this rule does not apply to the testimony of a witness who, while testifying, unintentionally commits an error in his or her testimony or is unintentionally mistaken as to some matters or facts therein, nor does it apply to a witness who, while testifying, gives evidence concerning matters not material in the case without any intention to deceive the Court or jury.

You are not bound to decide in conformity with the declarations of any number of witnesses, not producing conviction in your minds, against a less number or against a presumption or other evidence satisfying your minds. The direct evidence of one witness who is entitled to full credit is sufficient for the proof of any fact in this case.

You are the sole judges of the weight of the testimony and the credibility of the witnesses, and it is solely and exclusively for you to determine what the facts are, and this you must do from the evidence produced here in this trial, and then apply the law as stated to you in these instructions.

In a civil action such as the one we are now trying, the party who asserts the affirmative of an issue must carry the burden of proving it. In other words, the "burden of proof" as to that issue is on that party. This means that if no evidence were given on either side of such issue, your finding as to it would have to be against that party. When the evidence is contradictory, the decision must be made according to the preponderance of evidence, by which is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein. Should the conflicting evidence be evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favors such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

When you retire to your jury room you will choose one of your number foreman, who will sign your verdict.

Eight, or more, of your number concurring may return a verdict.

GIVEN:

DISTRICT JUDGE

QUESTIONS FOR CLASS DISCUSSION FOLLOWING MOCK TRIALS

Process and Experiences

1. Who is the most important person in the courtroom? Why?

2. Describe the role played by each of the participants in the trial.

3. It has been said that the "name of the game" is justice. Do you think that justice was achieved in this case?

4. Is there a better way of achieving justice?

5. If you were tried for a criminal (civil) offense, would you prefer a bench trial or a jury trial? Why or why not?

6. It has been said that trial by jury in a criminal case is inefficient, expensive, and time consuming. What do you think of this argument?

Criminal Case

1. With what crime was the defendant charged?

2. What legal questions or issues were raised by the case?

3. State the argument(s) of the defense.

4. State the argument(s) of the prosecution.

5. How did the prosecution try to prove its case?

6. Describe the strategy of the defense.

7. If you were an attorney for the prosecution or the defense, what facts or arguments would you have presented?

8. What was the decision? Do you agree or disagree with the decision? Why?

9. Do you have grounds for appeal?

10. In your judgment, did the defendant get a fair trial? If not, why not?

Civil Case

1. What relief did the plaintiff seek? Could the parties have reached a mutual settlement out of court? Could any other branch of local, state, or federal government have settled this dispute?

2. What legal questions or issues were raised by the case?

3. State the argument(s) of the defendant.

4. How did the plaintiff prove his or her case? What was the plaintiff's strategy?

Excerpted with permission from *Mock Trial Manual* (Albany: New York State Bar Association, 1975), pp. 9-10.

5. If you were an attorney for the plaintiff or defendant, what facts or arguments would you have presented?

6. What was the decision? Do you agree or disagree with the decision? Why?

7. In your judgment, did the plaintiff get a fair trial? If not, why not?

66 A

MOCK TRIAL 1: GRISBY v. AIKAN

Because the following simulation was written for use by teachers, attorneys serving as resource persons may find the language oversimplified and the background information unnecessary. However, attorneys preparing for a classroom presentation of this activity may wish to reproduce the section about voir dire in order to familiarize students with that procedure.

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County of Grisby v. Aikan — A Look at Jury Selection

Mark M. Stavsky

Objectives

After carrying out the *County of Grisby v. Aikan* simulation, students should be able to:

1) Define *voir dire* and *venireman*.
2) Describe the following aspects of the American legal system:
   (a) the role that the ordinary citizen plays as venireman and juror;
   (b) the means by which each side to a legal dispute looks after its own interest in the process of jury selection.
3) Explain, using examples, how a prospective juror's background and ideas may tend to influence his verdict in a jury trial.
4) Cite two or three ways in which a potentially biased venireman is discovered; describe how the judge is apprised of the potential bias; state the possible responsive actions of the judge.

Introduction

One of the first and most important proceedings in a jury trial is the *voir dire*—the examination of prospective jurors. These prospective jurors—called *veniremen*—are questioned, often extensively, regarding their prejudices. Based upon the venireman's responses, he is either excused from jury duty or accepted. Attorneys believe that the outcome of this proceeding often determines the outcome of the trial. Clearly, the *voir dire* is a significant part of the American judicial system.

Background on Voir Dire for the Teacher

While the *voir dire* is similar throughout the United States, not all jurisdictions use identical techniques. In some jurisdictions, the judge commences the proceeding with a preliminary examination of the veniremen. He generally asks them, either individually or as a group, routine questions to determine if they satisfy the basic statutory requirements for sitting on a jury. One common requirement is that the prospective juror understand the English language. The judge will also determine whether the prospective juror might undergo hardship if he or she is required to sit on the jury; women with young children are often excused for this reason.

While the judge is sometimes given discretion to conduct the entire examination, most jurisdictions permit the prosecutor and defense counsel to participate in the questioning of prospective jurors. Veniremen are sometimes submitted for approval in groups of four at a time, called a jury panel. In those cases, the prosecutor is permitted to question the panel members after the judge concludes the initial interview. Routine questions—e.g., requesting the veniremen's ages, occupations, addresses—can be directed toward the entire panel to avoid tiresome repetition and save valuable time. Other questions, relating to the panel members' personal experiences, are asked individually.

During the questioning, the prosecutor initially determines whether any of the panel members might prove to be "bad" jurors, i.e., inclined to vote to acquit the defendant. To prevent these individuals from sitting on the jury, the prosecutor can choose one of two procedures—a *challenge for cause* or a *peremptory challenge*. A challenge for cause is made when-

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ever the prosecutor can demonstrate a factual basis for believing that the venireman will not render his verdict impartially. Once that challenge is made, the judge must decide whether the venireman seems able to reach an impartial verdict. If he finds the individual likely to be prejudiced, the judge *sustains* the challenge, and excuses the panel member. Otherwise, he overrules the challenge.

If the prosecutor's *challenge for cause* is overruled, however, he is not entirely precluded from eliminating the venireman. He can still exercise one of his *peremptory challenges*—a limited number of challenges granted each side, giving them the power to dismiss a prospective juror without the approval of the judge. Since the number of *peremptory challenges* is limited—in Illinois, it is twenty per side in a capital case—the prosecutor and defense attorney must exercise them sparingly.

Peremptory challenges are also very useful when the prosecutor wants a prospective juror removed from the panel, but (1) does not want to articulate the reasons, and/or (2) is convinced that the judge would not sustain a *challenge for cause* of this prospective juror. For example, the prosecutor uses the *peremptory challenge* when he wants to remove members of a particular minority group or age bracket because he is convinced these persons would be more reluctant than others to convict the defendant.

If and when a prospective juror is excused, a member of the venire replaces him on the panel. As before, the judge begins the questioning and, if satisfied, lets the prosecutor continue.

Once the prosecutor approves the entire panel, he *tenders* it to the defense attorney for further questioning. The same rules that apply to the prosecutor during the *voir dire* also apply to the defense attorney. However, he views the panel members from an entirely different perspective; his objective is to discover and remove anyone who is likely to find the defendant *guilty*. If the defense attorney uncovers such a venireman during the questioning, and the individual is subsequently removed by a *challenge for cause* or a *peremptory challenge*, another venireman takes his place on the panel. However, after the judge concludes the customary interview, the defense attorney—not the prosecutor—continues to ask the questions.

Once the defense attorney is satisfied with all four panel members, he tenders them back to the prosecutor, who can then question and challenge any *new* members of the panel. If the prosecutor removes any of these *new* members, the defense attorney must later be given the opportunity to question the replacement veniremen. This process continues until either the defense attorney or the prosecutor tenders to the other side the same panel which was tendered to him. The panel of four is then seated on the jury.

If the laws of the jurisdiction require a twelve-person jury—and most jurisdictions do—three panels of four must be selected from the venire before the entire jury is seated.

Planning and Executing the Lesson

As with other simulations printed in this journal, your class will act out assigned roles, without the use of scripts, in order to learn more about a specific legal process—in this case, the voir dire. However, more latitude than usual is granted in this simulation so that the lesson can be tailored to teachers' specific needs. The following steps are suggested:

1) Tell your class that they are going to simulate an actual courtroom situation. Describe to them the voir dire procedure as outlined in the preceding section of this article. Be sure to stress the importance of the voir dire, and carefully explain the difference between a *peremptory challenge* and a *challenge for cause*.
2) Read the Pretrial Narrative to the class. Briefly discuss the problems involved in attempting to find a fair jury in Grisby County.
3) Select three groups of three students each to play the major roles in the trial of Shorty Aikan—i.e., three prosecutors, three defense attorneys, and three judges. Give the members of each group their respective instructions: the judges get a copy of Section 13 of the "Benchbook," the defense attorneys receive the Interoffice Memo; and the prosecuting attorneys receive the District Attorney's letter. Send all three groups out of the room. Remind them to take pencil and paper to write the questions they expect to ask of the veniremen.
4) The rest of the class becomes the *venire*. Distribute to each member of the venire a *Venireman Personality Profile Card* (VPPC) which you have prepared sometime prior to the day of the simulation. Choose someone to serve as *court clerk*, and present that person with a complete list of names of the veniremen.
5) After students have had a chance to study their VPPCs, the judges, defense attorneys, and prosecutors are asked to return. Review once again the purpose of the voir dire procedure. When you are satisfied that the students (particularly the judges and attorneys) understand, let the judges begin the proceeding. (*Note*: You may want to use just one judge to conduct the proceeding, but if you use three simultaneously they will be able to briefly consult one another before ruling on a challenge. At any rate, one judge should be appointed Chief Judge.)
6) *Debriefing the simulation*. After the simulation is concluded—that is, at least one panel of four has been seated on the jury—discuss with the class the process they have just observed. Ask the attorneys on both sides for the rationale behind their questions. Are there any other questions that could have been asked in an actual trial? Question the judges regarding their rulings, and find out if the other students in the class agree or disagree with those rulings. Try to establish a dialogue about the difficulty confronting judges who must make split-second judgments about complicated issues. Is a judge apt to have prejudices?

   Finally, ask for general observations from the class. They should be able to state the basic premise of the voir dire—that an individual's background may influence the way he votes on a jury. If this idea does not come out in the discussion, lead the students to this conclusion. Once this premise becomes apparent, elicit opinions on whether juries are a fair means to arrive at the truth of an issue.

Special Instructions for Writing the VPPCs

In constructing individual profiles, use fictitious names (e.g., Barbara Q. Soss, M. T. Hedd, etc.) and keep in mind the following:

A. While a prospective juror should have a believable (consistent?) personality, he or she should not be stereotyped. For example, a young Trentonian need not necessarily be in favor of youth gangs. By varying the characteristics, you accomplish the following:

1) Your Veniremen Profiles are realistic;
2) The judges and attorneys are challenged to decide issues which are more complex, not clear-cut.

B. The venire should be a reasonable cross-section of the types of citizens living within the county. It should represent all ages and classes of voters, possessed with a wide range of opinions and ideas. To reflect Grisby County's ethnic heritage, assume the population is 35% Freedonian, 25% Rentoovian, 20% Kryptonian, 15% Trentonian, and 5% others. Some of the characteristics and opinions that you may want to describe on the VPPCs are listed in Table I.

Pretrial Narrative (To Be Read to Class)

Old Man Swenson, an immigrant from the tiny country of Freedonia, ran a candy store on the corner of Lake and Elm in the city of New Freedonia. He opened his store forty-two years ago —soon after he came to the United States— and never missed a day of work until that fateful January day. His acts of kindness were legendary; "Swens" never let a child leave his store empty-handed—regardless of whether the child had money or not. "Pay me later," he would say. As often as not, he'd never see the money. But old Swens never let that bother him. His belief in the goodness of humanity remained strong.

The Freedonian neighborhood, which Swens had grown to love, was changing. More and more Trentonian faces were seen in his store as immigrants from Trentonia began to settle there. Meanwhile, the Freedonians—afraid of the change—migrated to the suburbs because the Trentonians were poorer and less educated and the crime rate in the old neighborhood had been going up. Gang warfare had erupted betwen young Freedonians and Trentonians. A great deal of tension, in fact, had been building in that part of the city.

"Move out, Swens," his Freedonian friends would plead with him. "These people are not like us. They're no good." But Swens refused. "People are people," he responded simply.

On January 8, 1975, a young man entered the empty store at about 8:50 P.M., a few minutes before Swens usually locked up.

"Do you have a phone I could use? It's an emergency!"

"Sure, Son. Follow me to the back of the store where the phone is."

The youth apparently knew where the only phone in the store was located. He followed Swens until he was certain that he could no longer be seen from the street. Then he pulled a knife, stabbed Swens several times in the back, and ran to empty the cash register.

Swens described his assailant as he was being carried out on a stretcher. He stated the boy was Trentonian-looking (meaning very light-colored, almost blond), about 5' 8" tall, between 19 and 21 years old, wearing dark blue pants and a white dress shirt.

At 11:00 P.M. that night, the police arrested Shorty Aikan, leader of a Trentonian youth gang, in front of his home just two blocks from the candy store. Shorty, 17 years old and 5'6" tall, wore black pants and a white tennis shirt. As the police were taking him to the hospital for Swens to identify, the report came over their car radio. Old Man Swenson was dead.

Handout 7

BENCHBOOK FOR GRISBY COUNTY JUDGE

BENCHBOOK FOR CIRCUIT JUDGES OF GRISBY COUNTY

Section 13. *Selection of Jurors*

a. *Calling the first panel.*

(1) The judge commences the *voir dire* by instructing the court clerk in the following manner: "Call out the names of the first four members of the venire." Then he speaks to the venire: "When your name is called, please take one of the chairs near the bench."

b. *Questioning of prospective jurors.*

(1) The judge shall be the first to interview the prospective jurors.

(2) The judge shall excuse any *venireman* from jury duty if and when he discovers, through questioning or otherwise, that said individual

(a) is unable to understand the English language, and/or

(b) is a first cousin or any closer relative to the judge, the prosecutor, the defense attorney, or the defendant, and/or

(c) has already decided whether or not the defendant is guilty, and states that he cannot be impartial.

c. *Challenge for cause*

(1) After a challenge for cause is made by either the prosecution or the defense, it is the duty of the judge to determine if the venireman can render an impartial verdict.

(2) While the judge has exclusive authority to determine if the challenged venireman can be an impartial juror, the following are some helpful guidelines. A prospective juror should be excused if

(a) that juror wants one side of the dispute to win over the other side. For example, a friend of the defendant or a friend of the victim may fall within this category.

(b) in reaching his verdict, the juror will weigh considerations other than the evidence presented to him during the trial. For example, dismiss a prospective juror who has had bad experiences with members of the defendant's race or nationality, or has read newspaper accounts relating to the defendant's character.

d. *Peremptory challenges*

. . .

(3) In a murder case, each side is entitled to three peremptory challenges. The judge must inform both sides prior to the commencement of the voir dire.

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Handout 8

VENIREMAN PROFILE VARIABLES

Table I: Venireman Profile Variables

- Attitude toward police, prosecutors
- Occupation
- Believes innocent until proven guilty
- Believes he/she can be impartial
- Read news reports or heard rumors
- Attitude toward youth gangs
- Experience as crime victim
- Relative of judge or attorneys
- Related to "Swens" or to Shorty
- Fluency in English
- Residence
- Experience with Freedonians
- Experience with Trentonians
- Ethnic Heritage
- Education
- Age

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Handout 9

DISTRICT ATTORNEY'S LETTER

Office of the District Attorney
Grisby County, Ohio

Olin Fernstock
District Attorney

Messers Able, Baker, and Sharley
Assistant District Attorneys
Grisby County Court House
Freedonia, Ohio

My Dear Colleagues:

My decision to assign you three to the Aikan case should come as no surprise. Each of you has acquired an impressive record of convictions, and I anticipate the verdict in this case will be no different. However, I wish to touch base with you on a few important matters before you get down to work on this case.

I am concerned about the voir dire. Your purpose during the jury selection is clearly to select a jury that will convict the defendant. This we can achieve through a process of elimination. First, we must eliminate all those individuals who are likely to let Shorty off the hook because they simply are prejudiced against people of Swens's background. Perhaps the venireman has had some bad experiences with elderly Freedonian shopkeepers. Consequently, you might ask the venireman if he believes that (1) all Freedonians are mean, or (2) all store owners cheat customers, or (3) that old people can't be trusted. The individual who believes these things will have his mind made up to acquit Shorty even before the trial begins. Determine whether or not any of the prospective jurors carry such opinions. If it is clear that any are so prejudiced, challenge them for cause. Then argue your your case before the judge. If he overrules, and you are still convinced of the venireman's inability to be fair, use one of your peremptory challenges. Also, use the peremptory challenge when you feel that a juror may be harmful to your case, but you cannot prove it. Perhaps you sense that he is hostile to you or your client. However, be very selective in using peremptory challenges, as you have only three of them.

Second, question prospective jurors to determine if they are distant relatives, friends, or even acquaintances of the defendant. In most cases, challenge such veniremen for cause. Their hope that Shorty will be found "not guilty" will likely prevent them from considering the evidence fairly.

In general, you should adhere to the rule that the fewer the similarities between the venireman and the victim, or the greater the similarities between the venireman and the defendant, the more likely that the venireman will acquit the defendant. These people you do not want on the jury.

So, get out there and do your best. The people of Grisby County are depending on you.

With supreme confidence in you, I remain

Olin
Olin Fernstock
District Attorney

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Handout 10

INTEROFFICE MEMO FROM DEFENSE ATTORNEY

INTEROFFICE MEMO

To: Attorneys for Shorty Aikan
From: Martin Martinson, Senior Partner
Re: Selection of the jury in the case *People v. Aikan.*

Before you proceed with the questioning of the veniremen, you should consider the following:

First, challenge for cause all those individuals who are likely to convict Shorty because of his background. These individuals may react negatively to Shorty's Trentonian heritage, his radical ideology, his youth, his gang activity, or the poor neighborhood he came from, and use those facts against him. Be on the lookout for veniremen who believe that (1) all Trentonians are criminals, or (2) all youth gangs are composed of killers, or (3) all young people cause trouble.

Second, challenge for cause any prospective jurors whom you feel will convict Shorty because of their relationship to the victim: they may be distant relatives, friends, or acquaintances of his. In general, their intense desire to see someone *pay* for the crime will likely prevent them from considering the evidence fairly. They hate Shorty merely because he was *accused* of the crime.

When making your *challenge for cause* in either of these situations, argue to the judge that the particular juror is too prejudiced to hear the evidence fairly. If your *challenge for cause* is overruled, but you sense hostility toward your client or yourself, use one of your peremptory challenges. However, be very selective in using peremptory challenges since you only have three of them.

Third, make certain each juror understands and recognizes an accused's basic trial rights; i.e., the accused

(1) is innocent until proven guilty;
(2) is not required to testify in court, and the jury cannot infer an admission of guilt from his silence;
(3) cannot be convicted unless the jury determines he is guilty beyond all reasonable doubt. A jury cannot convict if it only believes the defendant is *probably* guilty.

If any prospective juror fails to comply with these essential rules, the judge will certainly excuse them on a *challenge for cause*.

In general, you should adhere to the following rule: the fewer similarities between the venireman and the victim, or the greater the similarities between the venireman and the defendant, the more likely the venireman will acquit the defendant.

Good luck! MM

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MOCK TRIAL 2: DUNCAN v. WILSON

In this scripted mock trial, high school students are presented with conflicting versions of the same story--that of a traffic accident--and must determine which of the two stories they believe. Read the following introduction to the class and distribute copies of the script (Handout 11).

* * * * * * * * * * * *

When facts are in dispute, the law usually provides for a trial, often before a jury. Often at a trial various witnesses will present *conflicting* stories. Finding out at trial what "really did happen" when people are presenting conflicting stories is a big job. The law uses several techniques to try and make this process as accurate as possible. There are usually lawyers for each side to present the case. There are complex rules of evidence regulating the information that can be presented to the jury. There are rules concerning who wins if the jury is equally convinced by evidence of each side. There are certain "presumption rules": A person is presumed innocent until proved guilty beyond any "reasonable doubt"; a person is presumed sane until proved insane.

But even with all these rules and processes for finding the facts, can judges and jurors always know the *true* facts? Keep this question in mind as you read about what happened at trial in the following case.

The Case of *Duncan* v. *Wilson*

Suppose an automobile accident like the one described below led to a lawsuit in which you are on the jury. The accident occurred about two years ago. It involved a VW, driven by Ed Wilson, then a high school senior, and a Ford station wagon, driven by Mrs. Helen Duncan, a housewife. There is no dispute about the damage that resulted from the accident; it is agreed that Ed suffered a broken wrist and total destruction of his VW. His doctor bills came to $150; the VW was worth $1500. Mrs. Duncan received a hairline fracture of a vertebra and had auto repair bills of $300. Her medical expenses were $4500.

What is being contested at trial is the matter of who caused the accident. Under the law of the state where the accident occurred, the party who carelessly caused the accident is responsible to pay for the damages to the other party. And both parties agree on this rule of law. Mrs. Duncan has sued Ed Wilson claiming he should pay her $4800 because his carelessness caused her injury in that amount. Ed in his own defense claims the accident was caused by the carelessness of Mrs. Duncan and in turn asks that the court make her pay $1650 for the cost to him.

From *The American Legal System*, Unit 5: *The Limits of Law*, by Robert S. Summers, A. Bruce Campbell, and Gail F. Hubbard (Lexington, Mass.: Ginn and Co., 1974), pp. 48-55. Copyright 1974 by Ginn and Company. Used with permission.

Handout 11

DUNCAN v. WILSON

(The class should pick six, nine, or twelve students to sit as the jury who decides this case after other members of the class role-play the following trial scene.)

JUDGE: Your next witness, please.

ATTORNEY FOR MRS. DUNCAN: I call the plaintiff, Mrs. Helen Duncan, to the stand.

BAILIFF: State your name.

MRS. DUNCAN: Helen Q. Duncan.

BAILIFF: Do you swear to tell the truth, the whole truth and nothing but the truth?

MRS. DUNCAN: I do.

BAILIFF: Be seated.

DIRECT EXAMINATION

(BY ATTORNEY FOR MRS. DUNCAN)

Q. Mrs. Duncan, what do you do for a living? A. I am the mother of three young children, and I am a housewife.

Q. Are you licensed to drive in this state? A. I am.

Q. And how long have you been so licensed? A. Well, let's see, I guess sixteen years.

Q. Is this your first accident? A. Yes, so far as I can recall it is my first real accident. I suppose I've bumped the car parking a few times.

Q. Were you in your car on the morning of October 4 the year before last? A. I was.

Q. Please explain what happened to you. A. Well, it was a rainy morning, so I took my children in the car to the school bus stop. I pulled off Elm Road on the shoulder about ten yards before Elm Road intersects with Green Street at the school bus stop to wait.

Q. Which direction on Elm Road were you facing? A. I was headed south.

Q. What sort of roads are these, four lanes, city strets, or what? A. Oh, no. This is a residential section, two-lane roads with a 30-mile speed limit. Anyway, the bus came and the children got on. I watched the bus pull away down the street and then started for home.

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Q. Explain just what you did when you say you started for home. A. Well, the quickest way home was to turn left at the intersection that was in front of me and proceed home around the block. I looked in my rear-view mirror and saw that the only car coming was a little Volkswagen that was quite far back. So I pulled out and started to turn left.

Q. Did you do anything else before you pulled out? A. Oh, yes, I signalled left. I always use my signal lights.

Q. Then what happened? A. I had no sooner started my left turn and I heard an awful screaming of tires. Then crash. As I looked, I thought that Volkswagen was coming right through my door into the car. The next thing I remember I was in the hospital.

Q. Just one more question, Mrs. Duncan; you said you checked your rearview mirror before pulling out. If you saw the Volkswagen coming, why did you pull out? A. Oh, that is a long, straight stretch of road. I saw the VW, but it was quite far back. Several hundred yards, perhaps a quarter mile. He must have been going awfully fast to have caught up.

ATTORNEY FOR MR. WILSON: Objection, your Honor. The witness's reference to the speed of Mr. Wilson's car is based on nothing more than her opinion that he was a particular distance away.

JUDGE: Objection sustained. The witness will please limit her answers to the questions posed. The jury will disregard her reference to the speed of Mr. Wilson's car.

ATTORNEY FOR MRS. DUNCAN: Thank you, Mrs. Duncan; that's all I have.

JUDGE: You may cross-examine.

CROSS-EXAMINATION

(BY ATTORNEY FOR MR. WILSON)

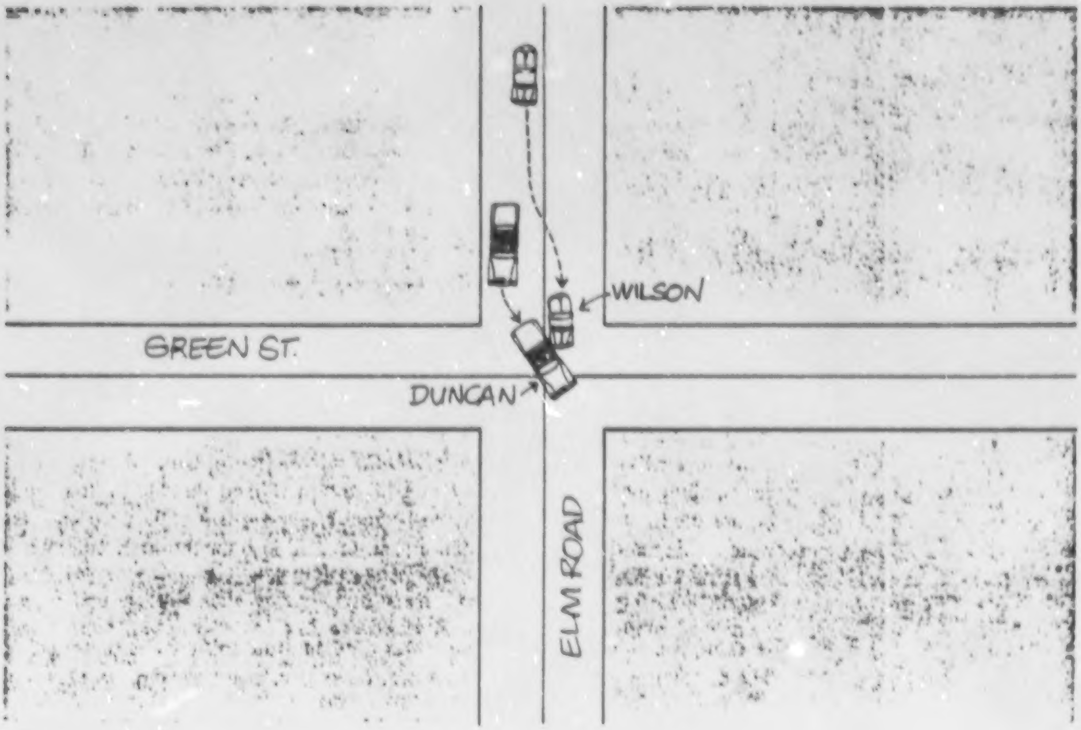
Q. Mrs. Duncan, you said you were pulled off Elm Road about ten yards from the intersection when you started to turn left through the intersection on Green Street. How far off the road were you when you started this pull-out, left-turn maneuver? A. I was almost completely off the road to start. I think all four wheels were off the pavement when I started.

Q. You said you signalled left before you pulled away from the side of the road? A. Yes, with my flashing light.

Q. How long ago did this accident occur? A. Oh, now I guess it has been almost twenty months.

Q. Is your memory so good that you normally remember each turn signal you make while driving for twenty months? A. I always use my turn signals, and I remember this one in particular. It's not every day some fool crashes into you.

Q. Just one more question, Mrs. Duncan. You said you checked your mirror and saw Mr. Wilson approaching, but you pulled out anyway because he was several hundred yards or maybe even a quarter of a mile down the straight stretch behind you? A. That's right.



Q. Several hundred yards or even a quarter mile? How many hundreds of yards would you say Mrs. Duncan? A. Oh, at least five, six, maybe even seven.

Q. Thank you, Mrs. Duncan. Incidentally, you know, of course, there are only 440 yards in most quarter miles. No further questons.

ATTORNEY FOR MRS. DUNCAN: Objection, your Honor. That comment was made simply to badger the witness.

JUDGE: Objection overruled. Please step down, Mrs. Duncan. That concludes the evidence for Mrs. Duncan's side, does it not?

ATTORNEY FOR MRS. DUNCAN: It does, your Honor.

JUDGE: Counsel, you may proceed with evidence for Mr. Wilson's case.

ATTORNEY FOR MR. WILSON: Thank you, your Honor. We have only one witness to call to the stand, Mr. Wilson.

BAILIFF: State your name.

MR. WILSON: Edward W. Wilson.

BAILIFF: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MR. WILSON: I do.

BAILIFF: Be seated.

DIRECT EXAMINATION

(BY ATTORNEY FOR MR. WILSON)

Q. What do you do for a living, Ed? A. I'm training to be an electrician. Right now I'm an apprentice.

Q. And at the time of the accident in question what did you do? A. I wasn't employed. I was a senior in high school.

Q. Will you please explain to jury what happened to you on your way to school on the morning of October 4 the year before last? A. Well, I was driving my VW along the same route I always took to school, coming from north to south down Elm Road. As I approached the intersection of Green Street, I saw a car standing by the side of Elm Road, off the right-hand shoulder, a few yards before the interesection. In order to be sure and avoid it, I noticed that no cars were coming in the opposite direction, and I pulled into the left-hand lane. When I was only a few feet from the back of the car that was standing, it darted out into the road.

Q. If you were in the left lane at this time, how did this car obstruct you? A. The car didn't just pull out. It shot out sort of diagonally crossing both lanes of Elm Road as if to make a left turn on Green Street.

Q. Did this car signal before it pulled out? A. If it did, I sure didn't see it. And I was looking right at it.

Q. Ed, how fast were you going as you were approaching the intersection of Green Street at Elm Road on that morning? A. Quite frankly, sir, I wasn't looking at the speedometer. But they give a lot of tickets out in that area, so I always keep it right around the speed limit there, which is thirty.

Q. One other thing. Did you signal to switch lanes when you pulled into the left lane to go by Mrs. Duncan? A. I don't think so. But if I had, it would have looked like I intended to turn left, and I intended to go straight through that intersection.

ATTORNEY: That's all. Your witness.

CROSS-EXAMINATION

(BY ATTORNEY FOR MRS. DUNCAN)

Q. Mr. Wilson, are you familiar with the system of white and yellow road center lines in this state that dictate when a driver is free to pass and when a driver must stay in line? A. Yes, solid lines mean no passing; broken lines mean pass with care.

Q. That's right, solid lines mean no changing lanes. Now are you familiar with any intersection in this state where the road immediately before an intersection has a broken line? A. I don't think so.

Q. Does Elm Road have such a broken line just as it approaches Green Street? A. I don't believe so.

Q. Then would you agree that a car approaching this intersection on the left-hand side was not in the proper position in the road?

ATTORNEY FOR MR. WILSON: I object, your Honor. We are not holding traffic court here. Mr. Wilson has already explained why he was where he was when the accident happened.

JUDGE: Well. . . .

ATTORNEY FOR MRS. DUNCAN: Your Honor, I'll withdraw that last question.

JUDGE: The witness need not answer the last question. Proceed.

Q. Mr. Wilson, do you recall the exact time of the accident? A. My car clock stopped at 8:20 a.m., so I think that was probably the moment of impact.

Q. You said you did not notice your speedometer. Is that correct? A. That's right, but I don't think I was breaking the limit.

Q. Are you a pretty good judge of speeds? Say, could you just sort of tell without a speedometer the difference between thirty, or forty, or even fifty miles per hour? A. I guess so. And anyway, I said already that I almost never break the limit there on Elm Road. It's heavily patrolled.

Q. Almost never. When you were a senior in high school, what time did students have to be in their homerooms in order to avoid being tardy—at the latest? A. I don't remember. About 8:30.

Q. Does 8:25 sound more like it? A. Yes, I guess that is correct.

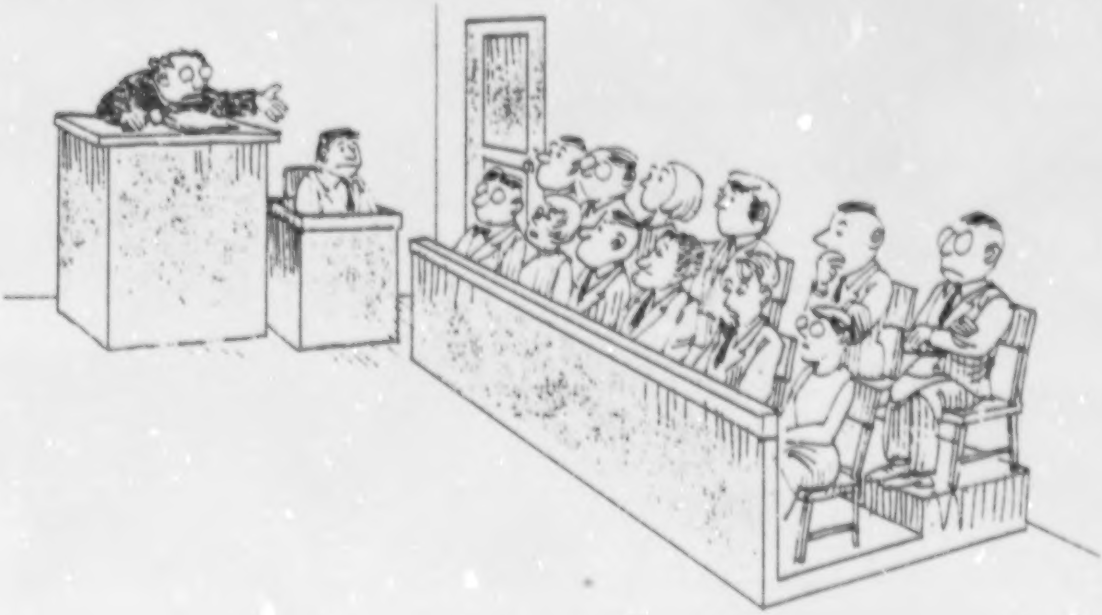
Q. And how long would it take to get from the intersection of Elm and Green to the high school parking lot *if* one were doing only thirty miles per hour? Or to put it another way, do you think perhaps it could only be done in five minutes if one were travelling a good bit faster than thirty miles per hour? A. I haven't much thought about it. I suppose one could drive thirty and simply be late to school.

ATTORNEY: No further questions.

. . . .

At this point in the case the lawyers for each side would speak to the jury and summarize their evidence. Then the judge would "instruct" the jury about the law that applies to the case and send them to reach a verdict.

JUDGE: Ladies and gentlemen of the jury, it is now my duty to explain the law for this case to you. You have heard conflicting testimony as to what are the facts in this case. It is your duty to determine what are the facts of this case and then to follow my instructions concerning the law. In other words, it is your duty to find the facts and apply the law, as I will now explain it to you.



This is a negligence case. According to the law of negligence, if one person's negligence causes injury to another, the first person must pay to make up for the harm he has done. In this case each party claims the other's negligence has caused injury. Mrs. Duncan claims $4,800 in injury to her; Mr. Wilson claims $1,650.

Now, what is negligence? Negligence is carelessness or the exercise of less care than a reasonable person would have used. In looking at the evidence, if you find the facts to be that Mr. Wilson's negligence caused Mrs. Duncan's injury, you must return a verdict for Mrs. Duncan for whatever you decide is the amount of her injury. On the other hand, if you find Mrs. Duncan's negligence caused Mr. Wilson's injury, you must return a verdict for Mr. Wilson for whatever you decide is the amount of his injury. Or if you find that the injuries were caused by the negligence of both parties, you must determine neither side is entitled to recover from the other.

You will now retire to the jury room to decide on your verdict. You first will elect a foreman to guide your discussions of the evidence. Then you will discuss the evidence until 9 of the 12 of you can agree on a verdict.

1. What verdict did your jury reach?
2. What specific findings of fact was this verdict based on? Do you know if these findings of fact are an accurate statement of what truly did happen in this case?
3. What limit of law do you see at work here?

USING A MOCK TRIAL WITH ELEMENTARY STUDENTS

A resource person should bear in mind, when preparing for a presentation to elementary-age students, that young children will have a very limited grasp of legal terminology. Therefore, it may be useful to prepare students for mock-trial activities by reading aloud the following explanation. The resource person should also be prepared to answer questions.

* * * * * * * * * * * *

Mock Trial

A trial is a meeting of a court to hear and decide a legal case. A mock trial is a pretend trial. In it, you and other students present the trial and act as the main people in the courtroom. The purpose of the mock trial is to help you learn more about courtroom procedure and the people who are a part of it. A mock trial follows the trial procedure of the lowest court.

A trial is held because two people or groups of people cannot solve a conflict. Therefore, any story about a conflict can be used for a mock trial. You may use one of the stories that you have seen in class. Or you might want to use an idea from a newspaper story or a television program.

The trial procedure solves a conflict by presenting facts to an impartial judge and jury. Each side of the case, through its lawyers, argues as strongly as possible. The jury listens to all the facts, weighs the two arguments, and makes a fair decision or verdict.

The Characters

Judge The judge is the person who is in charge of the court. He or she makes sure that the trial is fair and orderly. The judge sees that both sides of the case have a fair chance to present their arguments. Then the judge tells the jury what the principles of law in the case are.

Jury The people on the jury listen carefully to the statements of the witnesses. The jurors think about the facts a witness tells to see if they make sense and if they agree with what other witnesses say. Each

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juror also listens to the opening statements and closing arguments of the lawyers. At the end of the trial, the jury makes a decision for the case.

Prosecuting Attorney This lawyer brings the plaintiff's case before the court. He or she tries to show enough evidence to persuade the jury that their verdict should be in favor of the plaintiff.

Defense Attorney This lawyer brings the defendant's case before the court. He or she tries to show that there is not enough evidence to prove the defendant guilty. This may be done by persuading the jury that the witnesses for the plaintiff were not dependable. The defense attorney may also try to show that the evidence was not based on fact or that the witnesses contradicted each other.

Witnesses Each witness explains to the court what he or she believes to be the facts in the case. In a mock trial, the witnesses should report the information from the story.

Clerk of the Court The clerk opens the trial and swears in the jury. In a mock trial, the clerk may also help the teacher make copies of the story and set up the classroom.

Court Reporter The reporter takes notes to record the main points of the trial. This record can be used to find out what was said earlier in the trial. It can also be used for talking about what happened after the trial is over.

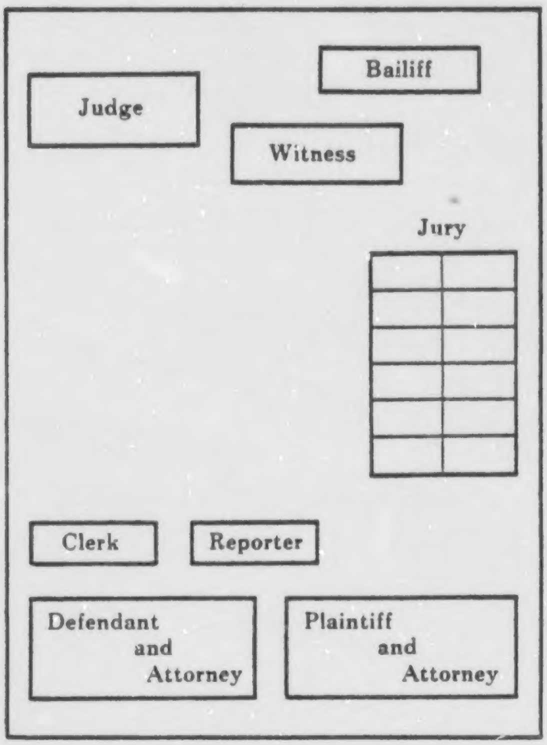
Bailiff The bailiff keeps order in the court and is in charge of the defendant. He or she sees that the jurors are not interrupted while they are deciding the verdict. The bailiff may also deliver any written messages during the trial.

Getting Ready

Choose one student to play each of the following parts in the mock trial: judge, plaintiff, defendant, prosecuting attorney, defense attorney, clerk of the court, court reporter, and bailiff. Choose six students to serve on the jury. An equal number of students should also be chosen to be witnesses for the plaintiff and for the defendant.

If you are using a story from a newspaper or a television show, the teacher and the clerk of the court should make copies of it for each of the main characters. The students will use the copies to prepare their arguments. It is best if the jury does not read the story before the trial. The facts should be presented to the jury through the questioning of the witnesses by the attorneys.

If possible, you may want to move the furniture in your classroom so that it looks like a courtroom. Here is a drawing to show how to set up the room.



The Trial

Use the following order of events to present the mock trial.

Opening of the Court The clerk of the court opens the court by saying that the court procedure is beginning. He or she also introduces the judge, the plaintiff, and the defendant.

Swearing in the Jury The clerk of the court asks the jurors to take their seats. He or she then asks them to swear that they will act fairly in listening to the case.

Opening Statement by Prosecuting Attorney This lawyer begins by telling the jury the important information about the case. This includes his or her name, the plaintiff's name, the defense attorney's name, the defendant's name, and the facts that led to the lawsuit. The prosecuting attorney then presents the plaintiff's side of the case to the jury.

Opening Statement by Defense Attorney This lawyer begins by stating his or her name and the defendant's name. The jury is told that he or she will try to prove that the plaintiff does not have a valid case. The defense attorney then presents the defendant's side of the case to the jury.

Direct Examination of Witnesses The prosecuting attorney calls the witnesses for the plaintiff one at a time to the front of the room. The clerk of the court asks each witness to swear to tell the truth. The attorney then asks questions of the witness. The questions are based on the facts the witness has to offer. After the plaintiff's witnesses have been questioned by both lawyers, the defense attorney calls the witnesses for the defendant.

Cross-examination of Witnesses During cross-examination, an attorney tries to get the other side's witness to admit something that will help his or her client. The attorney may also try to show that a witness is not dependable.

Closing Arguments Each attorney sums up the main points that help his or her client's case. The defense attorney is the first to present the main points.

Judge's Orders to the Jury The judge explains to the jury what the principles of law are in this case. He or she asks the jury to make a fair decision about the case.

Verdict The jury talks about and makes a decision for the case. In a real trial, the jury leaves the courtroom to reach a verdict. For a mock trial, the jury should talk about the case and come to a decision in front of the rest of the class. A majority vote of the jurors will decide the verdict.

After the Trial

When the jury has reached a verdict, the mock trial is over. It is important then for the whole class to talk about the trial and its results. Use questions like the following as a guide.

- Did each person play his or her part in the right way?
- What law or laws were broken?
- What was the main conflict?
- What arguments did the defense present?
- What arguments did the prosecution present?
- What facts were not presented?
- What was the decision? Do you agree or disagree with it?
- Are there grounds for an appeal to a higher court?

MOCK TRIAL 3: FRANCINE AND KERPLUNK

The story in Handout 12 can be used as the basis for a mock trial for elementary students. Guidelines for conducting the activity are presented below.

* * * * * * * * * * *

A Mock Trial

A simple mock trial can be developed on the issue of search and seizure. You will have to assume that frogs have the same Constitutional rights that we have. (The 4th Amendment gives us the right to privacy and protects us against unlawful searches and seizures.)

Procedure:

- Select four students to play the main characters: Francine, Kerplunk, Chief Bull Frog, and Fat Flopper.
- Select three students to play the judge, the prosecuting attorney, and the defendant's attorney.
- Select four more students to be witnesses: two for the prosecution, two for the defense.
- All of the participants in the trial, except for the judge, should read the story several days before the presentation. They will need this time to prepare arguments.

The rest of the class will serve as jurors. It is important that they do *not* know the story before the mock trial. All the relevant facts should be brought out by the attorneys in their examination of the witnesses.

Roles for the Mock Trial

Judge . . . The judge will conduct the trial in an orderly fashion. He or she will see to it that both sides have a fair chance to present their cases. After both sides have presented their cases, the judge will instruct the jury as to which principles of law apply. In this case, theft is a misdemeanor (a less serious crime than a felony) in frogdom. The search is legal if the law enforcement officer has permission.

Jury . . . It will be their responsibility to listen to the witnesses and determine the facts of the case. They should listen carefully to the arguments presented by the two attorneys.

Prosecuting Attorney . . . This lawyer will attempt to prove that Kerplunk is guilty of stealing the golden nugget and that he should be punished.

Defendant's Attorney . . . This attorney will attempt to show that the search was against the Constitutional rights of the accused. His client pleads not guilty. The lawyer contends that Kerplunk's Constitutional right to privacy has been violated or uses any other argument the lawyer thinks will be effective.

Witnesses . . . Each attorney may call two witnesses to support his side of the case. (Remember, Kerplunk pleads not guilty; so the prosecution will have to *prove* that Kerplunk stole the nugget.)

Conducting The Trial

In this trial, procedure should be as uncomplicated as possible. Only primary courtroom roles have been included and the less important steps in the process have been eliminated. The following steps should be followed, in sequence:

Opening of the Court
Swearing in of the Jury
Opening Statement of Prosecuting Attorney
Opening Statement by Defendant's Attorney
Direct Examination of Witnesses
Cross Examination of Witnesses
Closing Argument by Defendant's Attorney
Closing Argument by Prosecuting Attorney
Charge to the Jury
Deliberations by the Jury
Verdict Delivered to the Court

Evaluation

This is the most important aspect of a mock trial simulation. The following questions should help to direct discussion toward the major concepts.

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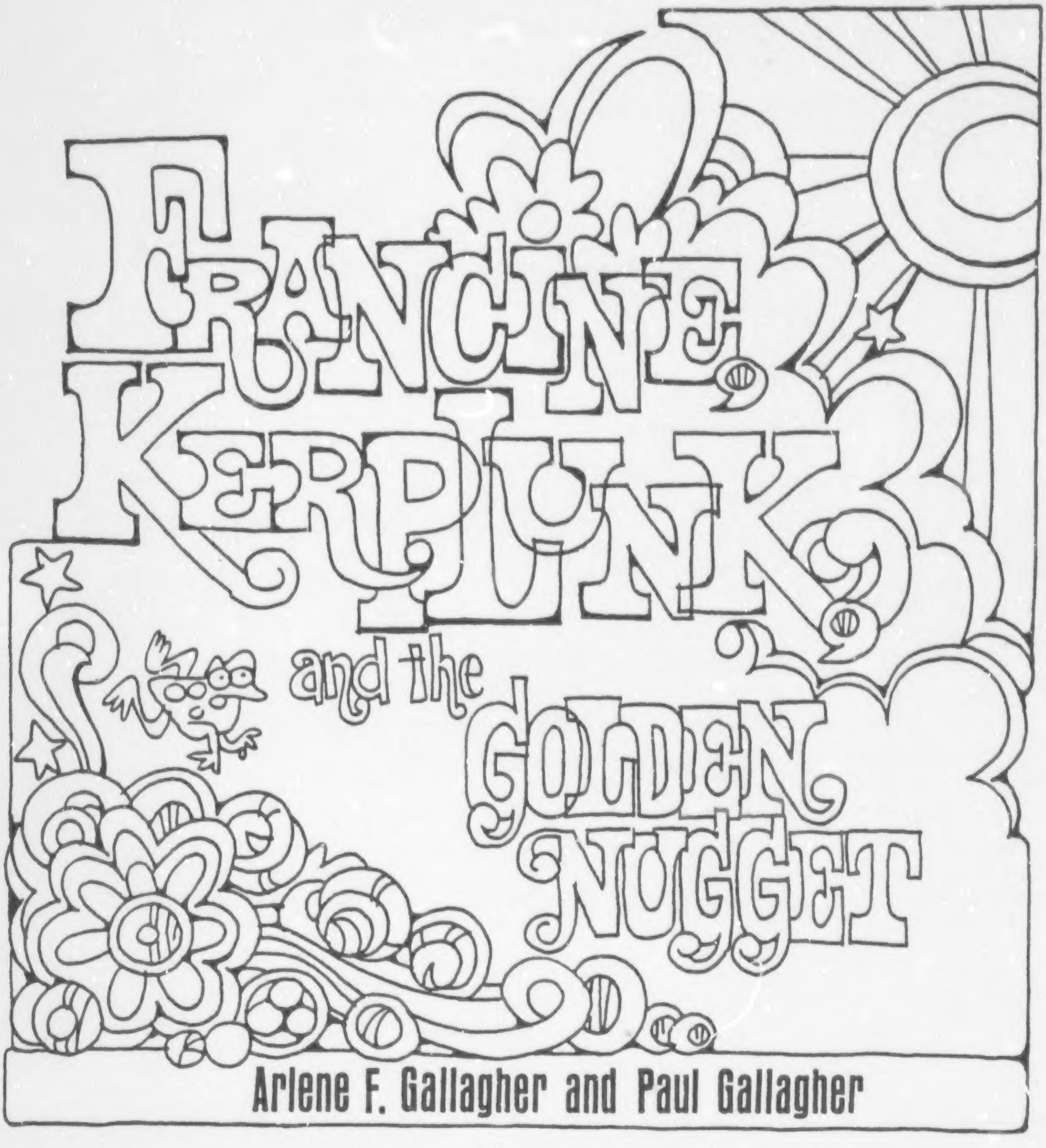
How well did each person play his role?
With what crime was the defendant charged?
What law(s) was(were) broken?
What is(are) the major issue(s)?
What arguments did the defense present?
What arguments did the prosecution present?
What facts were not presented?
What was the decision? Do you agree or disagree?
Are there grounds for an appeal?

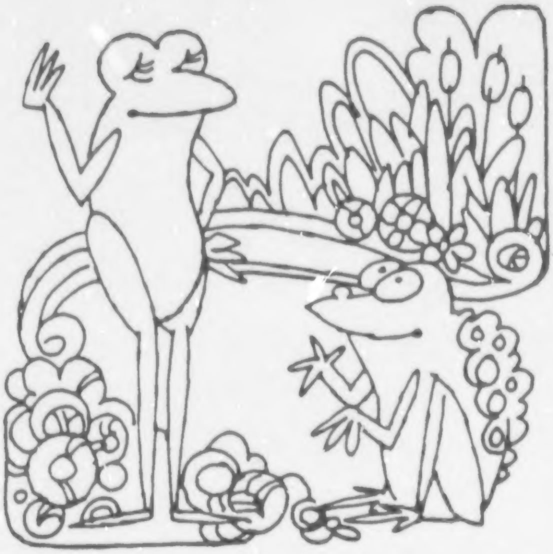
Handout 12

FRANCINE AND KERPLUNK


Francine, Kerplunk, and the Golden Nugget
Arlene F. Gallagher and Paul Gallagher

Reprinted with permission from *Law in American Society Journal* 3, no. 2, pp. 31-37.

ONCE UPON A TIME THERE WERE TWO TEENAGE FROGS NAMED FRANCINE AND KERPLUNK. THEY LIVED IN A POND IN THE WOODS. FRANCINE WAS A VERY PRETTY FROG. SHE HAD BIG BEAUTIFUL EYES. SHE HAD LONG FROG-LEGS. ALL THE FROGS IN THE POND THOUGHT SHE WAS PRETTY. KERPLUNK KNEW SHE WAS THE PRETTIEST FROG HE HAD EVER SEEN. BUT KERPLUNK WAS BASHFUL. HE NEVER KNEW WHAT TO SAY TO FRANCINE.



THE POND THEY LIVED IN WAS DOTTED WITH LILY PADS. MANY OF THE TEENAGE FROGS LIKED TO PLAY LEAPFROG FROM ONE PAD TO ANOTHER. ON THURSDAY EVENINGS, THEY WOULD GATHER ON THE GRASSY BANK TO PRACTICE SINGING. THE FROG-HORN CHORUS COULD BE HEARD FOR MILES AROUND.

FRANCINE AND KERPLUNK BOTH SANG IN THE CHORUS. KERPLUNK ALWAYS TRIED TO SING WELL SO THAT FRANCINE WOULD NOTICE HIM. BUT FRANCINE NEVER PAID ANY ATTENTION.

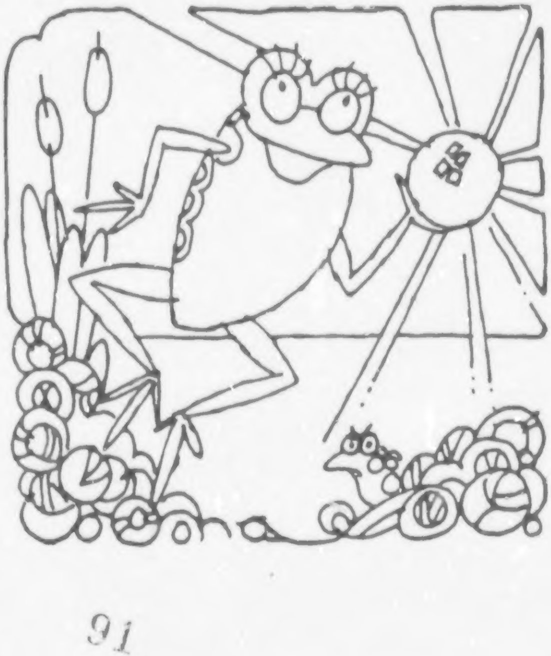
FRANCINE SPENT MOST OF HER TIME COLLECTING PEBBLES. IT WAS HER HOBBY. SHE WOULD SWIM OVER TO THE SPARKLY STREAM AND SEARCH ALONG THE BOTTOM FOR PRETTY STONES. SHE LIKED SMOOTH PEBBLES AND COLORED ONES. MOSTLY SHE SEARCHED FOR THE BRIGHT ONES THAT SPARKLED IN THE

SUNLIGHT. THOSE WERE REALLY HARD TO FIND. EACH DAY SHE WOULD FIND ANOTHER LOVELY STONE. HER COLLECTION GREW AND GREW.

KERPLUNK WOULD WATCH FRANCINE LOOKING FOR STONES. HE WOULD TRY TO GET HER ATTENTION BY SHOWING OFF. KERSPLISH! KERSPLASH! HE WOULD JUMP FROM LILY PAD TO LILY PAD. HE JUMPED HIGH AND NEVER MISSED A PAD. BUT FRANCINE IGNORED HIM. WHEN HE GOT UP HIS NERVE, KERPLUNK WOULD ASK FRANCINE TO PLAY. FRANCINE ALWAYS REFUSED. SHE WAS MORE INTERESTED IN HER PRETTY PEBBLES.

FINALLY, ONE DAY, KERPLUNK BECAME SO ANGRY THAT HE WARNED FRANCINE, "IF YOU DON'T PLAY WITH ME, YOU'LL BE SORRY!" FRANCINE IGNORED HIM. SHE COULDN'T THINK HOW KERPLUNK COULD MAKE HER SORRY. SHE CONTINUED TO LOOK FOR PEBBLES.

ONE DAY A WONDERFUL THING HAPPENED WHILE FRANCINE WAS LOOKING FOR PEBBLES. SHE FOUND THE BEST PEBBLE SHE HAD EVER SEEN! IT WAS SHINY. IT SPARKLED. IT WAS A GOLDEN NUGGET! SHE WAS SO EXCITED. SHE CALLED TO KERPLUNK TO LOOK AT IT. KERPLUNK DID NOT SEE ANYTHING SPECIAL ABOUT A STUPID STONE! LOOKING FOR PEBBLES WAS A WASTE OF TIME. HE ASKED FRANCINE TO PLAY LEAPFROG AGAIN.



SHE DIDN'T EVEN BOTHER TO ANSWER HIM. SHE HOPPED OVER TO A

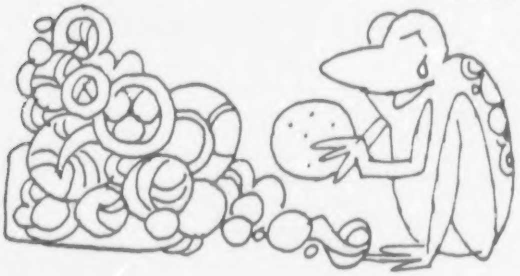
FRIEND'S HOUSE TO SHOW OFF HER GOLDEN NUGGET. KERPLUNK WAS HURT AND MAD AGAIN.

THAT EVENING KERPLUNK DECIDED TO GET EVEN WITH FRANCINE. IT WAS THURSDAY. EVERYONE WOULD BE SINGING ON THE BANK. FRANCINE WOULD BE THERE, TOO.

IT WAS QUIET EXCEPT FOR THE SOUND OF THE CHORUS. KERPLUNK KNEW HE WOULD NOT BE SEEN. HE SKIPPED OVER TO FRANCINE'S PAD.

HE WAS LOOKING FOR HER COLLECTION. HE FINALLY FOUND FRANCINE'S HIDING PLACE. THERE WERE LOTS AND LOTS OF PEBBLES. RIGHT IN THE MIDDLE OF THE PILE WAS WHAT KERPLUNK WANTED. THE GOLDEN NUGGET! NOW SHE'D BE SORRY. NOW MAYBE SHE WOULD PAY ATTENTION TO HIM. WHY, HE COULD EVEN PRETEND HE FOUND IT FOR HER IF SHE WAS TOO UNHAPPY. HE DID NOT WANT HER TO FEEL TOO BADLY. HE TOOK THE NUGGET AND SWAM HOME, LICKETY-SPLIT.

WHEN FRANCINE RETURNED FROM SONG PRACTICE, THE FIRST THING SHE DID WAS TO GO TO HER HIDING PLACE. "OH, NO!" SHE CROAKED. IT WAS GONE!! SHE BEGAN TO CRY. SHE LOOKED AND LOOKED, BUT THE NUGGET WAS NOT THERE. NOT ANYWHERE. SHE CRIED ALL NIGHT LONG.



THE NEXT MORNING FRANCINE STILL COULD NOT FIND THE NUGGET. SHE KNEW THAT SHE HAD PUT IT IN THE MIDDLE OF HER PILE OF PEBBLES. SOMEONE MUST HAVE TAKEN IT. BUT WHO? WHO WOULD DO SUCH A MEAN THING? EVERYONE KNEW ABOUT THE GOLDEN NUGGET. AND EVERYONE KNEW IT WAS HER FAVORITE PEBBLE.

ALL OF THE FROGS IN FROGDOM HAD BEEN SINGING ON THE BANK LAST NIGHT WHEN THE NUGGET MUST HAVE BEEN TAKEN. THAT IS, ALL OF THE FROGS EXCEPT KERPLUNK! AND KERPLUNK WAS MAD AT HER BECAUSE SHE WOULDN'T PLAY HIS SILLY GAMES! BESIDES, HE HAD WARNED HER THAT SHE WOULD BE SORRY.

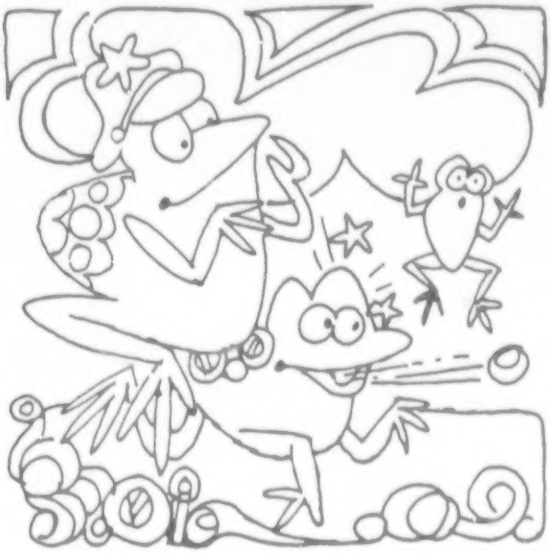
FRANCINE DECIDED THAT IT WOULDN'T DO ANY GOOD TO ASK KERPLUNK HERSELF. SHE HAD TO GO TO SEE CHIEF BULL FROG AND TELL HIM HER STORY. HE WOULD KNOW WHAT TO DO.

FRANCINE HOPPED OVER TO THE POLICE PAD. THE CHIEF WAS ALWAYS READY TO LISTEN. FRANCINE EXPLAINED WHAT HAD HAPPENED. SHE TOLD THE CHIEF THAT SHE WAS SURE KERPLUNK HAD TAKEN THE NUGGET. THE CHIEF SAID THE BEST THING TO DO WAS TO GO AND ASK KERPLUNK. FRANCINE DIDN'T WANT TO GO ALONE. THE CHIEF SAID HE WOULD GO WITH HER.

CHIEF BULL FROG AND FRANCINE WENT OFF TO KERPLUNK'S LILY PAD. WHEN THEY GOT THERE THE CHIEF ASKED KERPLUNK IF HE HAD TAKEN THE NUGGET. KERPLUNK DIDN'T ANSWER. HE WAS AFRAID.

Besides, he could not open his mouth to speak because the golden nugget was hidden under his long, fly-catching tongue. The Chief said if Kerplunk didn't mind, he would just take a look around the lily pad. Kerplunk gulped. His gulp looked like a nod to the Chief. The Chief decided he would need some help. So he called his assistant--Fat Flopper.

Now Fat Flopper was not very good at leapfrogging. He started over to Kerplunk's house and missed three lily pads on the way. As he bounced into Kerplunk's pad, he landed right on top of Kerplunk with a terrible "whump." You can guess what happened! Out popped the golden nugget! The Chief saw it--Francine saw it. Kerplunk looked really scared now.



What would happen? What would the Chief do? What would Francine do?

Moot Courts

GUIDELINES FOR CONDUCTING MOOT COURTS

Generally, a moot court is not an appropriate strategy for elementary students. If resource people decide or are requested to conduct a moot court with older students, it is important that all participants understand that a moot court is patterned after an appeals court or a Supreme Court hearing. Students may expect a mock trial, so attorneys must be prepared to explain that in a moot court the court, composed of a panel of judges, is asked to rule on a lower court's decision. No witnesses are called, nor are the basic facts in a case disputed. Arguments are prepared and presented on the application of a law, the constitutionality of a law, or the fairness of previous court procedures. In many ways a moot court is like a debate, for each side presents arguments for the judges' consideration. Moot-court hearings often help participants develop a greater understanding of the appellate level of our legal system and of the subject being debated.

How to Proceed

1. Select a case (actual or hypothetical) to appeal that raises questions relevant to a concept being studied. Prepare a statement of facts which includes a summary of essential evidence from the trial and the court decision to be appealed.

2. Divide the class into groups of from nine to twelve participants; divide each group into three- or four-member litigant teams or "judicial panels." Some teams are designated as "appealing litigant teams" and will have the responsibility of arguing against the ruling of a lower court; some teams are designated as the "supporting litigant teams" and will present arguments in favor of the lower court's decision; some teams will serve as judicial panels.

Another way to organize the class is to designate nine persons (eight if the resource person intends to serve as chief justice) as court members. These participants will be responsible for preparing written opinions. The rest of the class is divided equally into the two litigant teams. Yet a third format is to present a more realistic court session by involving a court officer and court reporter.

No one format is preferable to another in terms of learning outcomes. Which one is chosen should depend on ease of management and the amount of time that can be devoted to the activity.

It may be necessary for the resource person to devote two or more days to the activity in order to spend time with the various teams helping them determine the issues, develop arguments, or serve as judges.

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3. Each participant should be given a copy of "Instructions for Moot-Court Hearings" (Handout 13) and the statement of facts.

4. Time should be provided for discussion of the issues and preparation of oral arguments. Each litigant team should choose at least two people to present its arguments before the court.

5. The resource person may wish to serve on one of the judicial panels to assist students with this phase of the activity. Teachers might also serve as judges.

Principal Responsibilities of the Resource Person

1. To make certain that the case selected for the moot court is relevant to the concept being studied.

2. To assist with the coordination and support activities necessary to implement a moot court, specifically:

    a. Make arrangements to use actual courtrooms, if desired.
    b. Make litigant team and judge assignments.
    c. Determine appropriate time limits for each segment of the moot court.

3. To make certain that participants are familiar with moot-court procedures and their roles.

4. To assist participants in developing their arguments when help is needed.

5. To conduct a moot court.

6. To conduct the discussion session following the hearing.

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Handout 13

INSTRUCTIONS FOR MOOT-COURT HEARINGS

1. Participants should consider all of the details presented in the statement of facts to have been established in a trial court. Teams may not argue that any of those facts are inaccurate.

2. Arguments do not need to be confined to existing legal precedents or recognized legal theories. Any argument thought to be persuasive from a philosophical, theoretical, conceptual, or practical standpoint can be made. Teams may rely on principles founded on the U.S. Constitution.

3. Each litigant team should be prepared to present its oral arguments to a panel of judges. At least two members of each litigant team should present the team's oral arguments before the court of appeals. Teams may have as many spokespersons as they wish. The "appealing litigant teams" present their argument first, followed by the "supporting litigant teams'" presentation.

4. Teams should anticipate active questioning from the judges *during* oral presentations. Spokespersons representing each litigant team are expected to respond to questions and concerns raised by the judges immediately upon being challenged. Discussions with the judges in this manner will not extend the team's time unless the court exercises its discretion to permit an extension of time for the team's scheduled presentation.

5. Litigant teams' oral arguments are limited to a specific amount of time. The court has the discretion to grant extra time, but should not normally exercise this privilege. Any extensions of the time should be for a stated number of minutes. Teams may reserve a part of their total argument time for rebuttal argument. Rebuttal time need not be reserved. If time is reserved, it should be used to counter opponents' arguments, not to raise new issues. A member of the opposing team should serve as the presenting team's time adviser during the arguments. The following intervals showing the number of minutes left may be used by the time adviser: 10, 5, 4, 3, 2, 1, ½. Time advisers should hold up cards for the team's attention and for the court to see. If arguments have not been completed, spokespersons are nevertheless to terminate their presentations precisely upon expiration of the allotted time, unless the presiding judge grants an extension of time.

6. After the arguments for both the "appealing litigant" and "supporting litigant" teams have been heard by the court, the panel of judges should deliberate and reach a decision. Deliberation of the case may take place in private or may be conducted before the class. A time limit for these deliberations will probably be required.

7. After the decisions have been announced, class participants and attorneys should discuss the different courts' decisions, the issues raised, and moot-court procedures.

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MOOT COURT: *IN RE GAULT*

In re Gault (1967) is an exciting case for students to use as the basis for a moot court. The issues have immediate relevance for young people, and it is an excellent vehicle for introducing a unit on juvenile law. In some cases, resource persons may be asked to set up the activity so that it can be used to evaluate the extent of students' understanding of a juvenile law unit. Either use is appropriate.

Handouts 14-17 contain procedures, guidelines, and background material for a moot-court activity based on *In re Gault*. Some suggested questions for a concluding discussion are provided below.

Suggested Questions for Final Discussion*

1. What do you think are the most important parts of due process of law that help a person get a fair hearing in a court?
2. Why do you think these protections exist?
3. Do they sometimes make it harder to convict a criminal? Why?
4. Do you think juveniles and adults should be treated alike in all cases where law is involved? What are the advantages of having different treatment for juveniles as opposed to adults?
5. Why does the Constitution say there should be "due process of law," and why are the courts given the special responsibility of protecting it?
6. What interests and values are important in this case?
7. What interests and values are in conflict in this case?
8. What is "due process of law"? What is fairness?
9. Do you think Gerald had a fair hearing or not? Why?
10. What was Gerald's past record? Do you think it affected the judge's decision? Why?

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Handout 14

IN RE GAULT: INSTRUCTIONS FOR ROLE PLAYING

This role-playing exercise is based on a simplification of the actual case of *In re Gault.* The hearing will take place before the United States Supreme Court.

Who Are Involved?

Court Officer

Court Reporter

Nine Justices of the Supreme Court of the United States (one appointed by the group to be Chief Justice)

Attorneys for Gerald (one-half of the remainder of the class should elect three spokesmen)

Attorneys for the State of Arizona (the other half of the class should elect three spokesmen)

How to Proceed: Step by Step

1. Opening of the court by the court officer
2. Instructions by the Chief Justice
3. Argument to the court by Gerald's attorneys (5-10 minute maximum)
4. Argument to the court by the attorneys for the State of Arizona (5-10 minute maximum)
5. Deliberation by the justices (10-minute maximum)
6. Statement of opinion by the justices (statement by the majority and by the dissent if there is one)

What Do You Do?

Court Officer

1. Order all to stand until the justices are in the room and seated; then call the court to order thus: "Oyez, oyez, oyez, all persons having business before the Honorable Supreme Court of the United States are invited to draw near and give their attention, for the court is now sitting. God save the United States and this Honorable Court!"

2. You will then continue: "Are all persons connected with this case prepared for the hearing? Are the attorneys for Gerald Gault present, Mr._____, Mr._____, and Mr._____? Are the attorneys for the State of Arizona present, Mr._____, Mr._____, and Mr._____? Let the record show that all parties in the case of *In re Gault* are present and prepared."

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3. After the arguments, you will announce to the court that the justices will deliberate and make their decision (this deliberation can be held in front of the class or in another room).

4. When the justices are ready to make their opinions known, you will ask the court to rise to hear their decision.

Justices

1. Your first job is to read the "Statement of Facts" in the case before the hearing.

2. The *Chief Justice* should conduct the hearing according to the following order and time limits:
   - a. Ask Gerald Gault's attorneys to give their arguments first (5-10 minute maximum).
   - b. When Gault's attorneys have finished, ask the attorneys for the State of Arizona to give their arguments (5-10 minute maximum).
   - c. After both sides have made their arguments, you should conduct a discussion with the Justices in order to come to an opinion (10 minute maximum). You can do this before the class or privately.

3. Justices may question attorneys at any time during the hearing. After both sides have presented their arguments, Justices may continue questioning for a maximum of ten minutes.

4. After the Justices have heard the arguments and finished questioning, you are to make your decision and give the reason to back it up (a majority vote wins).
   - a. In this case some of the things you might decide are:
     1. Gerald Gault was given a fair hearing because juvenile courts should not have to use the same procedures as adult criminal courts. Juvenile courts should be allowed to use different rules so they can protect children from publicity and be able to handle better the special problems of children.
     2. Gault was not given a fair hearing. He should be set free and juvenile courts should follow certain rules to protect the rights of juveniles to a fair hearing.
   - b. In making your decision, you should think about:
     1. What parts of the arguments of the different attorneys do you agree with?
     2. What procedures do you think all juvenile courts should follow?
     3. Should juvenile courts follow the same procedures that adult courts follow?
     4. Which parts of constitutional law should juvenile courts follow?

Attorneys for Gerald Gault

Your job is to present the evidence you think shows that Gerald Gault did not have a fair hearing. You may argue that the laws that protect an adult's right to a fair hearing should also be used with juveniles. Look back at the laws listed at the beginning of the case such as the right to have a lawyer, the right to compel your accusers to appear in court, and other rights.

You should ask the Supreme Court to order Gerald Gault to be released and you may suggest that he be given a fair hearing in an Arizona court during which the same rules that apply to an adult accused of the same crime would be followed.

Your role will have two main parts:

1. A Statement to the Justices. You will make all of the arguments you can in favor of Gerald Gault. Your team may divide up the points to be made in any way you wish. One person may speak for the whole group or all may speak. It is important that you agree upon an order to follow in presenting your arguments.
2. Answering Questions. During and after your arguments, the Justices may interrupt you to ask questions. Make sure that your answers agree with all of the facts given or that they help your position.

Attorneys for the State of Arizona

Your job is to defend the actions of the judge of the juvenile court and the juvenile law of the State of Arizona. You should argue that there should be a difference between hearings for juveniles and hearings for adults accused of committing crimes. Some of the points you might make are:

1. Juvenile courts are not supposed to be criminal courts. The people in juvenile courts are responsible for helping children in trouble. The juvenile court judge is supposed to find out what a child is like, how he has become that way, and what should be done to help him. In some cases the judge may decide to take a child from his parents and place him in a foster home or in a special home for children where he will receive help.
2. If a juvenile judge had to follow the rules which protect the rights of an adult accused of a crime, he might not be able to find out important information to help decide how to plan best for the child. For example, he might not be able to find out things about the child's past history, his home life, and so forth. Therefore, it is important for the judge to have the power to decide how his court will be run and what evidence he needs to make a wise decision.

3. If a juvenile were allowed to have a lawyer defend him, the lawyer would make it difficult for the judge to learn all he needed to know in order to make an intelligent decision. The child and his parents should answer any questions the judge asks for the same reason.

   (Note: You might add other points to your argument showing the disadvantages of allowing the juvenile to have the same rights as an adult accused of the same crime. Look at the beginning of this case.)

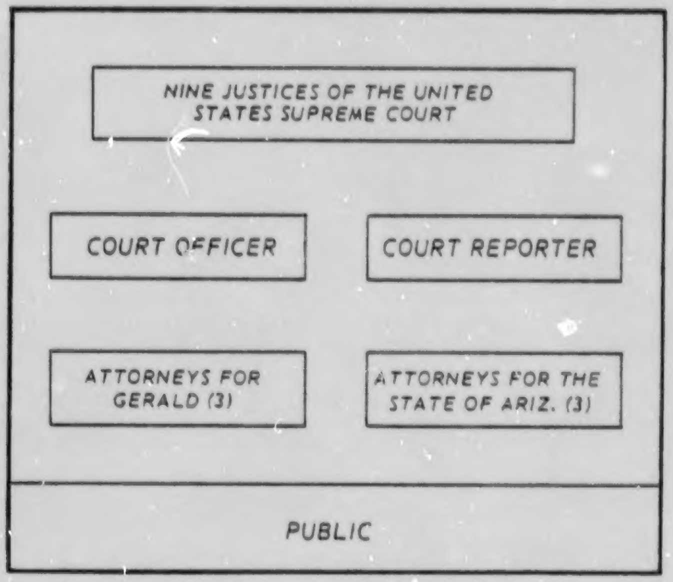
4. You should ask the Supreme Court to uphold the action of of the juvenile court for the reasons you have mentioned above.

Your role will have two main parts:

1. A Statement to the Justices. You will have ten minutes to give the facts as you see them and to present your arguments. You may divide up this time any way you wish among the members of your team.
2. Answering Questions. You are responsible for answering all questions the Justices ask. Be sure your answers agree with the facts given in the case and that they are arguments which you feel will help your position.

Court Reporter

Your are to tape-record everything that is said. If an attorney or Justice asks to hear any of the arguments over again, you should play them back.


COURTROOM FLOOR PLAN
NINE JUSTICES OF THE UNITED STATES SUPREME COURT
COURT OFFICER
COURT REPORTER
ATTORNEYS FOR GERALD (3)
ATTORNEYS FOR THE STATE OF ARIZ. (3)
PUBLIC

Handout 15

IN RE GAULT: STATEMENT OF FACTS

Gerald Gault was 15 years old. He was on probation for having been with another boy who had stolen a wallet from a lady's purse. On Monday, June 8, 1964, at about 10 a.m., Gerald and a friend, Ronald Lewis, were arrested by the sheriff of Gila County, Arizona, and taken to the Gila County Children's Detention Home. The boys were accused of calling a neighbor, a Mrs. Cook, and of making insulting and obscene remarks to her on the telephone. Mrs. Cook was shocked by what the boys said to her, and she called the sheriff, who traced the phone call to Gerald and Ronald. Soon after the boys were taken to the detention home, a probation officer, Mr. Flagg, questioned the boys, and they admitted making the telephone calls. Each boy blamed the other.

Gerald's mother and father were both at work on the morning that Gerald was arrested. The sheriff did not leave a notice telling them that Gerald was being held in the Children's Detention Home, nor did anyone from the sheriff's office call his parents. When his mother arrived home at about 6 p.m., Gerald was not there. She sent his older brother to look for him at the trailer home of the Lewis family. There the brother learned that Gerald had been arrested, and he went home and told his mother. The two of them went to the detention home, where Probation Officer Flagg, who was also superintendent of the detention home, told Mrs. Gault why Gerald was there and said that there would be a hearing in juvenile court the following afternoon.

During questioning, Gerald admitted to Officer Flagg that he had made other nuisance phone calls in the past which, according to him, were "silly calls or funny calls, or something like that." There was also evidence that Gerald might have broken some laws in the past. Two years earlier someone had said Gerald had stolen a baseball glove from another boy and lied about it to the police department. However, there had not been enough evidence to arrest him or to have a hearing.

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The next day Officer Flagg reported to Judge McGee of juvenile court that Gerald was under 18 years of age and a juvenile delinquent. He asked the judge to order that Gerald be taken from his parents and placed in the Children's Detention Home. According to the law in Arizona, a juvenile delinquent is a child who:

a. Has broken a law.

b. Is continually disobedient and not controlled by his parents, guardians, or custodians.

c. Is continually absent from school or home.

d. Continually behaves in such a way that he harms the morals or health of himself and/or others.

On the afternoon of the hearing, Gerald, his mother, his older brother, Officer Flagg, and another probation officer met with the juvenile judge. Gerald's father was out of the city on business and did not attend the hearing. Mrs. Cook, the woman who had complained about the boys' phone call, was not there either. No one was asked to swear to tell the truth at this hearing, and no record was made of what was said. The only way we know what happened at this hearing was from what Judge McGee, Mrs. Gault, and Officer Flagg said at another hearing two months later. The four agreed on some things that happened at the first hearing and disagreed on others. They agreed that at the first hearing the judge asked Gerald questions about the telephone call. They disagreed about what Gerald said. His mother recalled that Gerald said he had only dialed Mrs. Cook's number and handed the telephone to his friend Ronald. Officer Flagg remembered that Gerald had admitted making one insulting remark. They all agreed that Mrs. Gault had asked the judge if he was going to send Gerald to the detention home, and the judge answered that he would "think about it."

After the first hearing, Gerald was taken back to the detention home. Two or three days later, Gerald was driven home. No one explained why he was kept in the detention home or why he was driven home after two or three days.

On the day Gerald was driven home, his mother received a note signed by Officer Flagg. It was on plain paper and not official stationery. It said: "Mrs. Gault, Judge McGee has set Monday, June 15, 1964, at 11:00 for further hearings on Gerald's delinquency."

Handout 16

RELEVANT POINTS OF LAW

CONSTITUTIONAL LAW

No members of the United States Government can arrest a person without having a good reason to do so. Whenever possible, a police officer must give his reasons for wanting to arrest a person to a judge and have the judge give him permission to make the arrest. (Article IV, Bill of Rights)

All people accused of a crime have the right to have a lawyer help defend them. (Article VI, Bill of Rights)

No member of the United States Government can force a person who is suspected of a crime to give evidence against himself. (Article V, Bill of Rights)

No member of the United States Government can take away a person's liberty without giving him a fair hearing. (Article V, Bill of Rights)

In all criminal trials, the accused person has the right:

1. To a speedy public trial by a fair jury in the state and district where the crime has been committed.
2. To be told of what he is accused.
3. To have the witnesses who have spoken against him appear in court.
4. To have the right to compel witnesses in his favor to appear in court.
5. To have the help of a lawyer for his defense.

(Article VI, Bill of Rights)

Members of state, county, or city government *cannot:*

1. Make or enforce any laws which unreasonably limit the rights of citizens of the United States.
2. Have a person punished or take away his liberty or property without first giving him a fair hearing in a court of law.
3. Pass or enforce laws that unfairly discriminate against citizens living in their community or state.

(Article 14, Amendments to the Constitution)

ARIZONA LAW

Any person who in the presence or hearing of any woman or child uses vulgar, abusive, or obscene language, is guilty of a misdemeanor. An adult convicted of this crime can be fined from five to fifty dollars, or put in prison for not more then two months.

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Handout 17

COURT DECISION AND OPINIONS

Justice Abe Fortas, who wrote the Supreme Court's majority opinion for *In re Gault* (1967), granted most of the demands of the Gaults on the basis of the following reasoning:

> Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.
>
> Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise. As Mr. Justice Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure." . . . It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data: "Procedure is to law what scientific method is to science."
>
> The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence--and of limited practical meaning--that the institution to which he is committed is called an "industrial school." The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours. . . ." Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.
>
> It would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court.

Justice Fortas then proceeded to explain what he meant by due process of law for an accused juvenile delinquent:

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> 1. Due process of law requires notice of the sort we have described--that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived.
>
> 2. We conclude that the due-process clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.
>
> 3. We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.

Justice Black's concurring opinion emphasized that the due-process clause of the Fourteenth Amendment incorporated the Fifth and Sixth amendments of the Bill of Rights:

> Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the states by the Fourteenth Amendment. Undoubtedly, this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws--an invidious discrimination--to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards. I consequently agree with the Court that the Arizona law as applied here denied to the parents and their son the right of notice, right to counsel, right against self-incrimination, and right to confront the witnesses against young Gault. Appellants are entitled to these rights, not because "fairness, impartiality and orderliness--in short, the essentials of due process"--require them and not because they are "the procedural rules which have been fashioned

> from the generality of due process," but because they are specifically and unequivocally granted by provisions of the Fifth and Sixth amendments which the Fourteenth Amendment makes applicable to the states.

Justice White concurred with the majority, although he had reservations as to whether the privilege against self-incrimination had been violated. Justice Harlan concurred in part and dissented in part. He agreed with the Court in its requirement for timely and adequate notice, counsel, and a written record of the proceeding. He saw no need at that time to insist on the privilege against self-incrimination or on confrontation and cross-examination.

Dissenting Justice Stewart protested:

> The court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the nation restrictions that the Constitution made applicable to adversary criminal trials. I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.
>
> Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether dealing with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.
>
> The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a child was tried in a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by hanging. The sentence was executed. It was all very constitutional.

In summary, the Court majority had ruled that a juvenile charged with delinquency has the following rights:

1. He and his parents must be given written notice of the specific charges against him as soon as possible and with enough time before his hearing to get ready for it.

2. He and his parents must be told before the hearing that he has a right to a lawyer, and if they can't afford one that the Court will appoint a lawyer to represent him.

3. He does not have to make any statement or testify if he doesn't want to, and the Court must tell him that he has the right to remain silent.

4. If he doesn't confess, the Court has to have evidence from sworn witnesses, and the juvenile's lawyer can confront and examine these witnesses.

Pro-Se Courts

GUIDELINES FOR CONDUCTING PRO-SE COURTS

A resource person who is asked to conduct a moot court or mock trial for elementary-level students may wish to try a pro-se court procedure. The following description was written for teachers. Attorneys and other resource persons can lead the activity as well or better.

The four cases presented in the following pro-se court simulations concern occurrences and situations that young children are likely to be both familiar with and interested in. We have also selected three additional cases which attorneys might consider trying.

* * * * * * * * * * * *

Pro-Se Court: A Simulation

THE complexities of courtroom procedure and rules of evidence often dissuade the classroom teacher from using the mock trial strategy. As a result most children are never exposed to this highly motivating experience.

In pro se courts, complicated rules of evidence are reduced to common sense and procedure is kept at a minimum. A student observing in this courtroom can focus on the essence of judicial decision-making: deliberation on the issues of a case.

This pro se court simulation has been designed to provide an opportunity for students to role-play a case by starting with a minimum of roles: judge, plaintiff, and defendant. Once each student has played each of these roles the observer and attorneys' roles are added. In this way the mock trial is broken down and then rebuilt. The simulation offers a "stepping stone" to using the mock trial.

Reprinted with permission from *Law in American Society Journal* 2, no. 2, pp. 21-30.

Instructions To The Teacher

PART I

1. The simulation can be played with any size class. The diagrams are based on 30 students.
2. Arbitrarily divide the class into ten groups of three.
3. Have each child in each group decide upon a role — judge, plaintiff, or defendant. They will rotate roles for three rounds in the first part of the simulation.
4. Using the role descriptions, read the brief statements about each role.
5. Choose one case from those given and distribute only the FACTS of the case to all of the groups. Do not disclose the ISSUE or the DECISION at this time.
6. Have the children role-play within their individual groups. The plaintiff speaks first, then the defendant. The judge may ask questions before he makes his decision and gives his reasons.
7. Have judges explain decisions to the whole class.
8. Read ISSUE and DECISION to class. These are offered as samples and are not to be taken as absolute.
9. Rotate roles and repeat the process twice with a new case each time.
10. The following questions are suggested for debriefing the simulation:
    1. *Which is the most difficult role to play? Why?*
    2. *How well (realistically) did the participants play their roles?*
    3. *What were the issues in this case?*
    4. *Were the judge's decisions "fair"?*

PART II

This simulation may be role-played the following day:

1. Divide the class into groups of six (see diagram).
2. Explain that three new roles will be added to the three played in the prior simulation:

   Attorney for Plaintiff
   Attorney for Defendant
   Observer

   Read the descriptions of each.
3. Assign these six roles to each group:

   Judge
   Plaintiff
   Defendant
   Attorney for Plaintiff
   Attorney for Defendant
   Observer
4. One case can be role-played.
5. Distribute the case to the plaintiff and his attorney, and the defendant and his attorney. They should have five minutes to prepare their case apart from the judge and observer. During this five minutes you should meet with the judge and observer to go over their roles.
6. Role-play the pro se court according to the following steps:
   - A. Attorney for plaintiff presents his case.
   - B. Attorney for defense presents his case.
   - C. Judge may ask questions
   - D. Decision and reasoning by judge
   - E. Observer reports

Role Descriptions

Judge	The judge must see that both sides have a fair chance to present their cases. The judge should not interrupt or dominate the proceedings. In Part II, when the parties are represented by attorneys, he must insist that the attorneys stick to fair rules. The judge must decide whether a law has been broken. If so, he must uphold the law.
Plaintiff	This person has accused the defendant of doing or not doing something which he thinks is unfair. He is the one who has asked the court to hear the case. In a pro se court the plaintiff is asking the judge to make the defendant pay him an amount of money (under $300.00). He speaks to the judge first.

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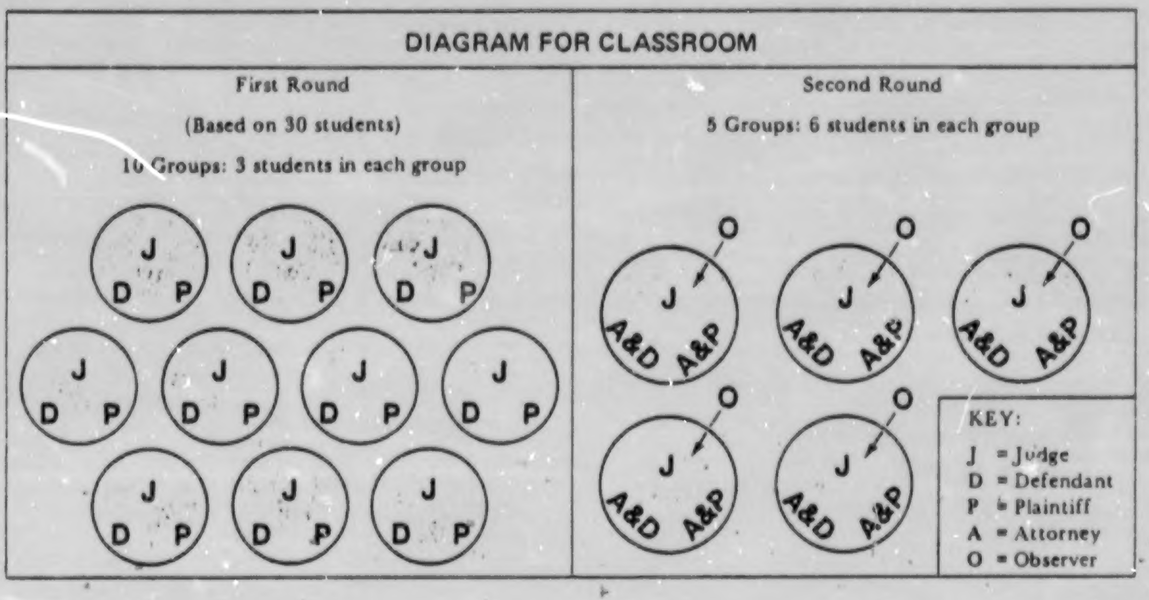

DIAGRAM FOR CLASSROOM

Defendant	This person has been accused by the plaintiff. He has been summoned into court and is probably appearing against his will. He listens to the accusation and then either tries to prove it untrue or gives reasons to justify his actions.
Plaintiff's Attorney	He tries to prove that the accusation is true. In a pro se court this attorney may ask questions of fact of the defendant and the plaintiff. He may not ask for their opinions. He speaks first.
Defendant's Attorney	He listens to the plaintiff's attorney and then tries to show that either the defendant did not do what he was accused of doing or that he had good reasons for doing it.
Observer	Your task is to listen carefully to the testimony of the plaintiff and the defendant and try to answer the following questions:

1. *What is the complaint? In other words, what is the plaintiff accusing the defendant of doing, or not doing?*
2. *What did the defendant say in response? Did he admit to the accusation? Were there reasons to justify his action?*
3. *Did the judge ask any questions? If so, what were they?*
4. *What was the judge's decision? Did he give any reasons for his decision?*
5. *Would you have made the same decision? Why or why not?*

FIRST CASE

Facts

1. Plaintiff is the assistant to a newspaper delivery boy.
2. Defendant is newspaper delivery boy.
3. Defendant became sick and asked his helper, the Plaintiff, to deliver [illegible] papers. Plaintiff agreed to deliver the papers for $2. Plaintiff delivered papers but [illegible] place them in mail boxes or inside houses. Twenty-five newspapers were ruined in the rain and Defendant refused to pay the [illegible] the Plaintiff. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Did the assistant fail to live up to his agreement? If so, what would be the appropriate remedy?

Decision

It appears from the facts that the Plaintiff did what he had agreed to. He agreed to deliver the papers, and did just that. The agreement did not specify that he had to put papers in the mailboxes or inside halls. On the other hand, it is important to remember that the Plaintiff was an assistant to the Defendant. Since he was an assistant, he knew from experience that delivering the papers included putting them in the mailboxes and in the halls. Therefore, it is clear that the Plaintiff should have done what he knew from his experience. It can be concluded, therefore, that the Plaintiff did not fully live up to the agreement. What is appropriate as a remedy? Only twenty-five papers were damaged. Therefore, half of the papers did get delivered successfully. Judgment for Plaintiff for $1. One dollar is appropriate since the agreement was for fifty papers and twenty-five people got their papers in good condition.

SECOND CASE

Facts

1. Plaintiff is a babysitter.
2. Defendant is a parent.
3. The Plaintiff agreed to babysit for the Defendant's two children for fifty cents per hour. When the babysitter arrived there was a third child, a cousin, present. Plaintiff said nothing about an increased rate but demanded 75 cents per hour when Defendant returned home two hours later, claiming the rate to be 25 cents per hour per child. The Defendant refuses to pay the additional 25 cents per hour. Plaintiff sues.
4. What is the ussue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Is the Plaintiff entitled to the additional 25 cents per hour?

Decision

From the facts, it appears the Plaintiff had agreed to babysit for 50 cents per hour. When the Plaintiff arrived on the job, and saw an additional child, he did not say he wanted more money. The Plaintiff had never told the Defendant that he expected 25 cents per child when they made the agreement. It was, therefore, unfair for the Plaintiff to demand this amount after the fact. The Defendant understood that the charge was 50 cents per hour and not 25 cents per child. To give the 25 cents additional fee per hour would be unfair to the Defendant. Judgment for the Defendant

THIRD CASE

Facts

1. Plaintiff is a comic book collector.
2. Defendant is a classmate.
3. Plaintiff loans ten comic books to Defendant for one week. The books are in very good condition and Plaintiff warns Defendant to be careful of them. The Plaintiff had paid 25 cents a copy for the books or a total of $2.50. Defendant returns five comic books in good condition but five are torn and ripped. Plaintiff demands $2.50 of the Defendant to cover costs. Defendant refuses. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Is the Plaintiff entitled to damages if Defendant returns loaned comic books in a condition different from condition the books were in when they were received?

Decision

When one loans an item to someone he is entitled to get it back in a condition reasonably similar to the condition it was in when he loaned it. In this case, five of the books were returned in a torn and ripped state. It is obvious that the Defendant did not exercise reasonable care while he read the books, and it is, therefore, unfair to return them in poor condition. What would be the measure of damages? If it can be shown that the Plaintiff could get the same comic books for 25 cents each, the Plaintiff would be entitled to $1.25 and the Defendant could keep the torn books. If the books were irreplaceable, the Plaintiff would be entitled to the $2.50 he sought. Judgment for Plaintiff.

FOURTH CASE

Facts

1. Plaintiff was the owner of a three speed bicycle.
2. Defendant was the owner of a bicycle repair shop.
3. Plaintiff brought bicycle into shop when the gears didn't shift properly. Plaintiff told Defendant-owner to fix the gears as well as possible but not to do anything that cost more than $25. When Plaintiff came to pick up bicycle the next week, he found that the shop had installed brand new gears and had sold his broken gear shift to a bicycle used parts company. The Defendant told Plaintiff that he owed $50. The Plaintiff told Defendant that he would pay $25 since that was the amount he had said was as high as he could go. The Defendant said he would not get the bicycle back until $50 was paid. Plaintiff sues.
4. What is the issue?
5. How would you decide? Why?

Role-play before distributing the following:

Issue

Can the Defendant do more than he was authorized to do by the Plaintiff without first making an additional agreement with Plaintiff?

Decision

No. The bicycle repair shop cannot take unfair advantage of a customer. The Plaintiff-customer had placed limitations on what the shop could do. The shop cannot do more without consulting customer. Since it was too late to return the bicycle in the condition in which it was brought in, the shop must give the bicycle with the new gear to the Plaintiff for $25. Judgment for Plaintiff.

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ADDITIONAL CASES FOR PRO-SE COURTS

Case 1

Plaintiff: Lynda Fisher, junior in high school

Defendant: Steve Sampson, owner of Pan-National Student Tours

Lynda Fisher wanted to go to Japan for her summer vacation but had saved only $500. She read a full-page ad in a magazine: "Student group flights from Philadelphia to the Orient--only $450 round trip. To be eligible you must join our student group. Just send a deposit of $100 toward the purchase of a round-trip ticket and you'll become a member."

Lynda filled out the coupon for more information and received a brochure repeating the information in the ad and indicating that the chartered flights would be booked on a scheduled airline. She filled in the coupon, signed an agreement to join the student group plan, and enclosed $100 deposit.

A short time later, a membership card in Pan-National Student Tours arrived with a notation that Lynda's flight would be scheduled for June 28, that final payment for the trip was requested by May 15, and that tickets would soon follow. The remainder of the fare was mailed, and Lynda heard no further word.

On June 1, Lynda telephoned the student tours office and was told, "The trip is being processed and tickets will be sent as soon as plans are complete."

By June 20, Lynda had still not heard from the tours office. The agent, Mr. Strazzi, reported that the trip to the Orient had been undersubscribed and would lose money for the company. Therefore, the complete tour was cancelled. But for the same fare the company would fly Lynda to London and try to make other arrangements for transportation to the Orient. Of course the cost of the additional arrangements would be charged to the student members. Lynda demanded her money back, including the $100 deposit. Pan-National refused to pay. Lynda sued.

Case 2

Plaintiff: Bess Kay, lessee in a luxury apartment building

Defendant: Mr. Wolf, owner/developer of the luxury apartment building

Bess Kay is called at work to come home to open her apartment door because a water pipe has burst in the ceiling above her closet. All her clothes and shoes have been water damaged, her rugs are soaked, and the bottoms of all of her furniture have been damaged by the water.

Developed by Harriet Bickleman Joseph.

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She is told by the apartment manager, Mrs. Tye, to contact the building's insurance agent. The insurance agent urges Bess to do whatever is necessary to protect her property and to save all the bills.

Bess sends her rugs and pads out to be dried and cleaned and takes all her clothing to the dry cleaners. She keeps copies of all receipts. The total amount of damage is $250. She also asks an inspector from licensing and inspection to come out to view the damage. He confirms her belief that the damage has been caused by water leaking from a broken water pipe.

Two weeks after the incident, the manager, Mrs. Tye, calls Bess to explain that the burst water pipe was an "act of God" and not negligence on the part of the developer; therefore, the building's insurance company will not pay for any damage incurred by the incident. Bess sues.

Case 3

Plaintiff: Shirley Wax, owner of Super Value Furniture Co.

Defendant: Oliver Whitney, purchaser of a used stove

Oliver Whitney bought a stove for $175 after checking over a number of them. He asked, "Is this stove guaranteed?" The store manager, Mr. Blum, answered, "We guarantee that the stove will work when it is delivered or we'll refund your money."

Whitney put $75 down and agreed to pay the remainder over the next two months. The stove worked well for the first month, but then he noticed, the day before the second installment was due, that the burners failed to heat. Whitney called the store and Mr. Blum said, "We'll try to repair the stove, but you'll have to pay for parts and labor." Whitney argued that the store had guaranteed that the stove would work. Blum retorted that the guarantee did not specify a period of time, and that Whitney should bring in the $100 due before the stove would be repaired.

Whitney called the Better Business Bureau for assistance and was informed that a file existed on other consumer complaints about the Super Value Furniture Co. The BBB representative encouraged him to sue the store in small claims court for failure to live up to guarantees and for sale of faulty merchandise. Meanwhile, Whitney was sued for the balance of the money due on the stove.

Brainstorming

GUIDELINES FOR BRAINSTORMING

The brainstorm is a very useful classroom strategy because all students, regardless of level of academic achievement, can participate equally. It is nonthreatening because no evaluation is allowed, and it does not require prior preparation. In addition, a significant amount of information can be gathered quickly.

A critical concern, of course, has to do with what one chooses to have a class brainstorm about. One good topic for secondary-level students is "How many ways have you been in contact with the law since you got up this morning?"

Procedures

1. Post the "Rules of Brainstorming." These should be explained briefly.

Rules of Brainstorming

1. Say anything that comes to mind.
2. Piggybacking on the ideas of others is good.
3. Don't evaluate or criticize what others say.
4. When you can't think of anything else, wait a minute and try again.

---

2. Tell students to call out their ideas (no hands). Post these as they are called out.

3. *Participate* in the brainstorm if it is obvious that students have not gotten the "idea." For example: (a) "I listened to the radio," (b) "I brushed my teeth," (c) "I walked the dog," (d) "I looked at my watch," (e) "I spent some money."

4. Keep going until it is obvious that nothing new will be said, but be willing to allow enough time for everyone to get into the swing of things.

5. Match all of the "ideas" to particular laws or enforcement agencies. For example: (a) F.C.C., (b) Pure Food and Drug Act, (c) leash law, (d) standard time, (e) banking. Some of the "ideas" may be family rules, some may be natural laws, and some may be religious tenets. If the list contains many examples from various sources, students might categorize them by source.

6. One alternative would be to focus on civil and criminal law and classify the "ideas" into these two categories. Students are often surprised that generally they are more often in contact with the social aspects than with the punitive aspects of law.

7. Another alternative might be to lead a discussion on the *effects* of breaking some of the laws they mention. This can lead into a discussion of felonies and misdemeanors.

This brainstorming activity is useful in grades 4-12 to develop in students an awareness of how often they come in contact with the law in the course of their daily activities. Students are asked to tell about all the activities in which they believe the law is involved; a general discussion follows in which specific laws are matched to actions. For example, one of the activities which many students will mention is "I turned on the radio (or TV) to find out what the news was about today." In this case, two areas of law are involved: law governing radio or TV broadcasting, and the whole general area of freedom of the press.

After brainstorming this particular question, secondary students might be asked to complete Handout 18 as a follow-up activity. A related activity that would be useful with intermediate and junior-high students, "When Is the Law Involved?," is provided with the activities for "Introduction to Law" in the "Content" section.

Handout 18

HOW DOES THE LAW AFFECT PEOPLE'S LIVES?

Directions: Next to every daily activity, place an "X" in either the "Yes" or "No" space depending on whether you feel that the law (as you understand that term) does or does not affect that particular activity. If your response is yes, use the last column to briefly explain how the law affects that activity.

Activity	Any Legal Impact?		How?
	Yes	No	
1. Wake up, turn on light.			
2. Wash your face.			
3. Get dressed.			
4. Eat breakfast: cereal, bacon, eggs.			
5. Read the paper and see an ad for furniture sale (you're thinking of buying a sofa).			
6. Get in your car.			
7. Drive to school.			
8. Buy lunch in cafeteria.			
9. Stop in at furniture store and purchase a sofa on credit.			
10. Pick up your paycheck, go to bank, and deposit part of the check.			
11. Stop at supermarket and buy a roast, canned fruit and vegetables, milk.			
12. Pick up prescription at pharmacy.			
13. Stop at department store and charge a sweater.			

Developed by Harriet Bickleman Joseph.

Activity	Any Legal Impact?		How?
	Yes	No	
14. Go home and discover you have no heat. Call your landlord.			
15. Turn on the TV while you make dinner.			
16. Eat dinner.			
17. After dinner, a salesman appears at your door selling encyclopedias. You don't buy them.			
18. Your landlord drops by to explain that the pipes in the basement have burst but that water and heat should be restored within the hour.			
19. While the landlord is present, you pay him your rent.			
20. Watch more TV.			
21. Take a bath, wash your hair.			
22. Turn out the lights and go to bed.			

Dilemmas

GUIDELINES FOR USING DILEMMAS

Activities that require students to take positions on or make decisions about moral and ethical issues can be very effective in developing "gut-level" understanding of subject matter and concepts. Such activities often call upon students to infer reasons or information, challenge unsupported statements, and explore their own personal value positions.

In using dilemmas with students and other groups, it is important to remember that there is usually no one "right" answer to any given question, and that it is *not* useful to attempt to reach a consensus of opinion. Rather, the objective is to encourage each participant to develop a position *based on sound reasoning and relevant information*.

The Social Studies Curriculum Center at Carnegie-Mellon University has identified four basic steps for using dilemmas with students:

1. Confronting the dilemma. During this phase, the resource person helps students understand the dilemma and clarifies the situation or the terminology used to describe it, if necessary.

2. Deciding on a position. The resource person can help students do this by giving them time to think about the issue and the various alternatives, by asking them to write down their reasons for taking those positions, and by helping students brainstorm reasons for various courses of action. (See "Guidelines for Using Brainstorming," pages 77-78. At some point in this stage it is useful for the resource person to ask students to indicate their positions by a show of hands; if more than 70 percent of the students are in agreement, the resource person should introduce some new alternatives in order to stimulate interest and promote a better discussion.

3. Testing reasons for positions. This should be done first in small groups and finally with the whole class. The task of the resource person during this phase is to encourage students to challenge one another's reasoning and ask questions that help clarify students' thinking processes. This step usually requires the most time.

4. Reflecting on the discussion. During this "summing-up" phase, the resource person should help students summarize the various alternatives presented and the strongest reasons for each one. The resource person may also want to introduce some new reasons that students have not thought of. No attempt should be made to achieve consensus or closure; rather, the discussion should end on an open or incomplete note.

Of the dilemma activities presented in this section, "When Should You Call the Police?" is suitable for secondary students and adults; "Holly's Friends" is appropriate for upper-elementary and intermediate students, and "The Open Window" can be used with very young children.

USING A CONTINUUM: HOW SERIOUS AN ACT OF VANDALISM?

This activity was designed to provide students with the opportunity to make judgments about the relative seriousness of various acts of vandalism. Students are to circle the appropriate number indicating their feelings about each act, using a scale or continuum ranging from 1 = not very serious to 7 = very serious.[*]

Procedures:

1. Provide each student with a copy of the instrument (Handout 19). Ask that each complete it at his or her desk.

2. After students have marked their sheets, solicit responses for each of the items. Explore reasons for the various responses.

3. Upon completion, rank order on the basis of class totals. Discuss such questions as: How important was the act itself? How significant was the reason for the act? Should all vandals be treated alike?

Adapted with permission from *Focus on Law* 2, no. 2 (a publication of the Center for Law-Related Education), p. 6. This activity was based on a lesson developed by Michael V. Minton.

Handout 19

HOW SERIOUS AN ACT OF VANDALISM?

Directions: Read the definition of vandalism below, then read the descriptions of the seven acts of vandalism. Below each description is a series of numbers from 1 through 7. Circle the number that represents your feelings about the seriousness of each act of vandalism. The numbers stand for a continuum ranging from 1 = not very serious to 7 = very serious.

> *Vandalism:* The willful and malicious destruction, injury, disfigurement, or defacement of property without consent of the owner or person having custody or control.

1. Six boys spray an animal laboratory with a fire extinguisher.

   1 - 2 - 3 - 4 - 5 - 6 - 7

2. A street sign reading 30 mph is altered to read 80 mph.

   1 - 2 - 3 - 4 - 5 - 6 - 7

3. Graffiti covers the restroom walls of a local high school.

   1 - 2 - 3 - 4 - 5 - 6 - 7

4. While celebrating a World Series victory, baseball fans throw rocks and cans through many windows of downtown businesses.

   1 - 2 - 3 - 4 - 5 - 6 - 7

5. A teenage girl puts a lipstick heart and initials on an ancient Indian rock carving.

   1 - 2 - 3 - 4 - 5 - 6 - 7

6. Several youths set fire to an open field and then call the fire department to see how long it takes for the fire trucks to arrive.

   1 - 2 - 3 - 4 - 5 - 6 - 7

7. On Halloween, two boys splatter several homes with eggs.

   1 - 2 - 3 - 4 - 5 - 6 - 7

Adapted with permission from *Focus on Law* 2, no. 2 (a publication of the Center for Law-Related Education), p. 6. This activity was based on a lesson developed by Michael V. Minton.

MAKING DECISIONS: WHEN SHOULD YOU CALL THE POLICE?

This activity calls for students to imagine that they are citizens who have witnessed the violation of laws or who have been confronted with potentially illegal situations. In each case, students are presented with three or four alternatives (see Handout 20) from which to choose the best response.

After distributing copies of the handout, the resource person might want to point out that not all the suggested responses are active--some of them are passive ("do nothing") responses. Yet even the passive responses have probable consequences. After marking their worksheets, the students should discuss the probable consequences of each alternative response. Some students might want to change their responses after such a discussion.

During the wrap-up discussion, the resource person should encourage students to suggest additional responses. Perhaps none of the alternatives presented is the best possible action to take under the circumstances. If a student comes up with a better plan for dealing with any of the situations, be sure to explore the reasons why the student thinks his or her suggestion is better.

Finally, it is important to bring out the fact that perceived risk is an important element in deciding whether to react actively, passively, or at some intermediate level of involvement. What might happen to a citizen who chose to actively oppose the perpetrator(s) in some of these situations? In making such a decision, a citizen must always (though perhaps not consciously) balance the real or potential personal risks against the benefits to society and others that might result from active involvement. Because that kind of assessment is necessarily subjective, there may be no "right" answers to some of these multiple-response questions.

Handout 20

WHEN SHOULD YOU CALL THE POLICE?

Directions: Circle the letter that indicates how you would respond to each of the following situations.

1. As you walk past a parked car, you see several kids fooling around with the door handles. One of them is trying to force open a window. What would you do?

   a. Mind your own business.
   b. Say nothing to the kids, but call the police.
   c. Help the kids get the car open.

2. While in a department store, you see an adult put several small articles in his pocket. What would you do?

   a. Tell the manager or a clerk.
   b. Watch and follow the person and then call the police.
   c. Shoplift, too.

3. It is early evening and almost dark. Three teenagers you know are still on the school grounds. They are throwing rocks and kicking balls at the windows of the school. What would you do?

   a. Get out of there and stay out of the trouble.
   b. Watch and hope that nothing happens.
   c. Call the police.

4. You see Tom, a friend of yours, grab a woman's purse and run with it into his house. What would you do?

   a. Call the police.
   b. Tell Tom that you saw him do it.
   c. Tell the woman that you saw what happened.

5. You are on your way to a movie when you see a small child playing along the side of an untended swimming pool. What would you do?

   a. Yell at the child and tell him to get on home.
   b. Go over and pull the child away from the pool.
   c. Start looking for the child's mother.
   d. Look for a police officer.

6. You are at home alone when you hear strange noises outdoors. What would you do?

   a. Open the window and yell out to whoever is there to go away.
   b. Grab a weapon and run outside.

Questions 1-4 were adapted with permission from *Focus on Law* 1, no. 2 (a publication of the Center for Law-Related Education), p. 10.

   c. Call a neighbor.
   d. Call the police.

7. You have heard the child in the next apartment crying almost continuously for the past month or so. You also know the child is often covered with cuts and bruises. What would you do?

   a. Go next door and accuse the parents of child abuse.
   b. Do nothing, because it is really none of your business.
   c. Talk to several neighbors to consider talking to the parents in a group.
   d. Call the police.

8. You see a person who has obviously had too much to drink get into a car and try to start it. What would you do?

   a. Try to convince the person that he or she is in no condition to drive.
   b. Mind your own business.
   c. Offer to drive the person to wherever he or she is going.
   d. Call the police.

USING DILEMMAS WITH ELEMENTARY STUDENTS

Dilemma strategies can be very effective in helping younger children understand law-related concepts if the dilemma stories are based on familiar, everyday situations. In using dilemmas with elementary students, however, a resource person must remember that young children often place a higher value on personal friendships and loyalties than on conventional morality or legal technicalities, and that they often have at best a vague idea of what the law actually says in any given case. It is important for the resource person to carefully point out that there are times when the law demands that personal friendship must come second to what is "fair" or "right" for the larger society.

Handouts 21 and 22 are simple stories presenting dilemma situations that are easily understandable to even the youngest students. Each one can either be duplicated for students to read or read aloud by the teacher or resource person. In either case, before conducting the follow-up discussion, the adult leader should make sure that the children understand what happened in the story and that they can identify each of the characters.

During the follow-up discussion, be sure to give as many students as possible a chance to respond to the initiating questions so that you can determine whether they have different viewpoints about the story. Encourage students to respond to other students' comments. For example, you might say, "David, do you agree with what Lisa said? Do you have some idea about it?" Direct questions to individual students rather than to the class as a whole; a loud chorus of "No!" responses will certainly intimidate a student who would like to respond "Yes." The objective is to encourage the formation of individual decisions, not to reach a consensus.

Suggested warm-up questions (to be asked before reading the story) and follow-up questions for both stories are provided below.

"The Open Window"

Warm-up Questions

1. How many of you have ever played kickball or softball or some kind of game on the school playground after the school was closed?

2. Have you ever looked in the window of the school after it was closed?

3. Have you ever been playing with a group of your friends when someone said, "Let's go do something," and you were not sure whether you really wanted to do it or not, but you wanted to go along with your friends?

Follow-up Questions

1. Can someone tell us what happened to Cindy and her friends?

Questions for "The Open Window" were developed by Faith Haber Galbraith. Both story and questions for "Holly's Friends" were developed by Ronald E. Galbraith.

2. Do you think Cindy should be upset by what the principal and the teacher have said?

3. Do you think she should talk to the principal or the teacher sometime during the day?

4. Should she talk to her parents about what happened at the school?

5. If she tells the principal or the teacher about what happened the night before, should she mention the fact that she was also inside the school for a few minutes?

6. Is it right to go into a school building if you find a window open?

7. If Cindy tells the principal about what happened the night before, should her friends be angry with her because she told?

8. Should Cindy say anything to any other students about who was involved in the open-window incident the night before?

9. What was the worst thing that the students did in the school: write silly things on the chalkboard, turn all the desks around, or take down the second graders' art display?

10. If Cindy's friends are discovered and taken to the principal's office, should the principal punish them in any way for what they did?

11. Did Cindy commit an act of vandalism?

"Holly's Friends"

Warm-up Questions

1. How many of you have ever bought something that fell apart right away or turned out to be no good? Would you feel that you had been cheated if the store refused to take it back?

2. Have you ever wondered whether you should "tattle" on someone? What might happen if you did?

3. When you go to the store alone, do the sales clerks sometimes treat you differently than they would treat you if you were with one of your parents?

Follow-up Questions

1. Should a person protect someone who has been dishonest?

2. What might happen to Pam and Carlene if the store manager gets their names?

3. If Holly doesn't give the store manager the girls' names, is she responsible for the stolen bracelet?

4. If Holly keeps her friends' names a secret and gets into trouble with her parents, what should Pam and Carlene do?

5. Which is more important, staying out of trouble yourself or protecting a friend?

6. Should Holly still be friends with Pam and Carlene?

7. If Pam got caught and was taken to juvenile court for shoplifting, what facts would the judge want to know before deciding her case?

8. Given the facts in this story, what should happen to Pam as a result of her shoplifting? What should happen to Holly and Carlene?

Handout 21

THE OPEN WINDOW

Each evening right after dinner time, the big playground next to the school was always filled with kids. Kids from the neighborhood were always starting softball, kickball, or sometimes even volleyball games which lasted until it was almost dark. On this particular evening, Cindy, Jason, and Paul, along with a lot of other kids, had been playing kickball. It was almost dark and the game was about to break up when one of the girls shouted, "Hey, look what I found!" Eight or nine of the kids ran over to the side of the building to find out why the girl was shouting. One of the windows in the school was open. Jason had an idea: "Hey, let's boost each other up and go inside the school. That will be fun! No one will be in the school building except us, and we can have fun." The kids all agreed and one by one were boosted up through the window and into the classroom. Cindy was one of the last ones to come in through the window and the other kids had already gone out of the classroom and started running down the halls of the empty school. Cindy was afraid. She wasn't sure she wanted to be part of this. She knew she wasn't supposed to be inside the school after it was closed. She thought for a minute and decided that she better go home. It was almost dark, anyway. She crawled back out of the window, stretched as far as she could, jumped a short distance to the ground, and ran home.

Reprinted with permission from *Moral Reasoning: A Teaching Handbook for Adapting Kohlberg to the Classroom,* by Ronald E. Galbraith and Thomas M. Jones (St. Paul: Greenhaven Press, 1976), pp. 165-66. Copyright 1976 by Greenhaven Press.

The next day when Cindy arrived at school, she noticed that there was a lot of confusion. The teachers were talking out in the hall, and a lot of kids were talking and laughing in the classroom. Cindy soon found out what all the confusion was about. The principal visited each classroom and told the students what had happened the night before. Somebody had broken into the school the evening before and had been running around in the empty building. Whoever it was had turned all the chairs around so that they were backwards in several of the classrooms. They had taken the blanket from the nurse's office and had been sliding up and down the floors in the hall. They wrote a lot of silly things all over the chalkboards in several of the rooms, and they took the second graders' art display down off the wall near the gymnasium. The principal explained that this was more than just a prank. Students were not supposed to be in the school building after the school was closed. The teacher explained, "We are all proud of our school and we all have to take responsiblity for protecting the school and the building. If anyone in the class knows about what happened in the school building last night or who was involved, he should go to the principal some time during the day and tell the principal what he knows."

Should Cindy talk to the teacher or to the principal and explain what had happened the night before?

Handout 22

HOLLY'S FRIENDS

Holly, Pam, and Carlene had been friends since fourth grade. They spent a lot of time together after school and on weekends. On one of the first really warm spring days, the three girls decided to walk into a shopping plaza near their neighborhood. Pam was telling the other girls about a necklace which she had bought at Gilbert's Gadget and Garment Shop. Pam said that her necklace had lasted only two weeks before it had broken. She had taken the necklace back to the store, but they wouldn't do anything about it. Carlene said that she didn't think that was fair, especially since Gilbert's charged such high prices for all the junk in the store. Holly said that she didn't like the store because many of the sales clerks are mean to you when you are looking at things.

The three girls entered Gilbert's Gadget and Garment Shop and began looking at jewelry, hats, and sunglasses. Pam was trying to find a necklace like the one she had bought at Gilbert's earlier so that she could show Carlene how it had broken. Carlene said that she wanted to go look at sunglasses because she really needed some even though she didn't have the money. Holly left her two friends and went across the aisle to look at some big summer hats. As she was leaving, she heard Carlene whisper to Pam that she could probably steal a pair of sunglasses if she really wanted to.

Pam and Carlene started talking to one another about how it was possible to sneak things into your sleeve or into your purse while no one was looking. Carlene dared Pam to get a pair of sunglasses without the clerk seeing her. Holly was still across the aisle trying on big, floppy hats when a salesperson stopped her and told her that the girls should not be strolling around the store unless they were planning to buy something.

Carlene continued to tease Pam about being too scared to walk out of the store with something. Holly suddenly noticed Pam slip a silver bracelet into her sleeve and walk slowly out the door. Carlene moved away, tried on several pairs of sunglasses, placed them back on the rack, and followed Pam out of the door and down the sidewalk.

Holly stood by the hats, surprised that Pam had actually gone through with the "dare." A sales clerk walked up to Holly and took her by the arm saying, "You and the other two girls have been shoplifting. We are going to the manager!" The manager and the store security officer questioned Holly. They insisted that Holly and the two girls were working together, but they told Holly that they would not call her parents if she gave them the names of the other girls. Holly stood silently. The store manager repeated his statement: "Give us your friends' names or you will be in big trouble!"

What do you think Holly should do?

Holly's Friends, by Ronald E. Galbraith (San Antonio: American Institute for Character Education, 1977), is used with the permission of Ronald E. Galbraith.

Surveys

GUIDELINES FOR USING SURVEYS

The purpose of conducting a survey of students' values or attitudes is to stimulate thinking on a variety of issues, many of them controversial. Such a survey can serve as a motivational device for later study by creating interest in the area of juvenile law and justice. The following format is suggested for using such a survey:

1. Have each student complete the survey (Handout 23) independently in class, to ensure that the students do not discuss each other's responses before completing their own work.

2. Have students pair off and discuss their responses on a one-on-one basis. This will allow each person a chance to express his or her opinion without letting a few of the more-verbal students dominate the class.

3. Use a tally sheet (Handout 24) to tabulate the responses for the entire class. To expedite this procedure, two or three smaller groups may be formed, with a student from each one designated to record the responses. The final tally should then be compiled and presented to the class. Students are often surprised to discover the range of opinion among their peers, since they may assume that everyone feels the same way on most issues.

4. Conduct a discussion based on the results of the survey. If the opinions of the class are virtually unanimous, it is not necessary to discuss a question at length. However, free and open dialogue should be encouraged when there is divergent opinion in the responses to a particular statement. The adult leader's role should be simply to facilitate input by encouraging students to express their opinions and support them. No attempt should be made to challenge student opinions or to reach a consensus at this time.

Note: The tally sheet of student responses (Handout 24) should be kept on file so that the teacher can refer back to these results as particular issues come up later in the curriculum, comparing attitudes before and after the topics are studied in depth.

Adapted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 11-15.

Handout 23

WHAT DO YOU THINK?

Directions: After reading each of the statements in this handout, mark the appropriate letter in the blank space which most accurately reflects your opinion of the statement. There are no right or wrong responses; the statements are designed to stimulate your thinking on many of the issues which will be considered in this curriculum. (SA = strongly agree; A = agree; U = uncertain; D = disagree; SD = strongly disagree.)

_____ 1. High school students should be permitted to dress in any manner they please as long as standards of health and safety are maintained.

_____ 2. School authorities should be permitted to search student lockers without notice in order to uncover evidence of drug traffic on school grounds.

_____ 3. Students who are married and/or pregnant tend to detract from an effective atmosphere for learning in the classroom.

_____ 4. State and local police and law officers do not have the right to be stationed on school property, even if there is a threat of disruption.

_____ 5. If a school provides financial support for the student newspaper, members of the administration should have the right to censor articles which they consider in poor taste or as reflecting negatively on the school community.

_____ 6. Each student's complete permanent record file should be open to his or her examination both during high school and afterward.

_____ 7. Since a school is a special case (legally speaking), normal rules of due process--for example, a hearing and witnesses--are not necessary before a student can be suspended or expelled.

_____ 8. A school which allows military recruiters or JROTC on the campus should also permit draft counselors or representatives from peace groups to meet with students in the school.

_____ 9. Since they are the ones most directly affected, students should have a role in determining the hiring and firing of teachers in a school system.

Adapted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 11-15.

_____ 10. There should be legal restraints preventing teenagers from obtaining birth-control information or devices without the consent of their parents or physicians.

_____ 11. The police are criticized too often by young people for just trying to do their job honestly and fairly.

_____ 12. Parents should be held legally responsible for the actions of their children, both in and out of school.

_____ 13. If parents and teachers would be stricter, young people would grow up respecting law and authority.

_____ 14. One way to solve the drug problem would be to sentence pushers to 25 years in prison.

_____ 15. Television and newspaper reports of crime and movies like *The Godfather* tend to encourage violence among youths.

_____ 16. A reduction in the legal age for driving would reduce the number of auto thefts by young people.

_____ 17. If a young person runs away from home, resulting in an extensive police search, he or she should be charged by the courts as a runaway to discourage others from doing this sort of thing.

_____ 18. Except in rare circumstances, children should obey their parents.

_____ 19. The "X" and "R" ratings for motion pictures, which limit attendance by young people, serve as useful guidelines for parents in deciding on suitable entertainment for their children.

_____ 20. Drug addiction and alcoholism should be treated under the law as medical problems, not as criminal offenses.

_____ 21. In our justice procedures, the distinction between juveniles and adults works to the advantage of young people by shielding them from the brutal aspects of the system.

_____ 22. Delinquent behavior is mainly a lower-class, urban, slum problem.

_____ 23. Most young people who get caught up in delinquency really *want* to be discovered and helped.

_____ 24. The existence of juvenile detention centers, reform schools, and prisons discourages or deters young people from committing crimes.

_____ 25. There should be a set penalty for each youthful offense, with little or no discretion left to the juvenile judge as to what the sentence should be.

_____ 26. Some element of punishment should be a part of any good prison rehabilitation program.

_____ 27. Shoplifting is not really "ripping off the establishment" but rather larceny or theft; therefore, shoplifters should be prosecuted to the fullest extent of the law.

_____ 28. The personality and behavior of a child is determined by the atmosphere within the family home and the roles his or her parents play in setting standards of conduct.

_____ 29. A juvenile should be given a trial by jury for any offense for which an adult criminal would be tried.

_____ 30. When you get right down to it, chances of receiving justice are determined almost entirely by age, sex, color, and wealth.

Handout 24

VALUE SURVEY: TALLY SHEET

	SA	A	U	D	SD
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
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25.					
26.					
27.					
28.					
29.					
30.					

MEASURING ATTITUDES TOWARD POLICE

The Cop-O-Meter (Handout 25), a device used to assess students' attitudes toward police, may be used in upper-elementary classes as well as with secondary students and adults. This opinion survey, which may be used as a starting point for a discussion about police roles and students' feelings about police, has been given to about 10,000 students throughout the United States. The results of this national test program are provided in Handout 26. By calculating percentages of class responses to each question, students may compare their answers to those of the entire group.

Handout 25

COP-O-METER

1. The police should have the right to use whatever means are necessary to capture and punish criminals.

   ___Definitely agree ___Undecided; probably agree
   ___Undecided; probably disagree ___Definitely disagree

2. Law officers, like state or local police, have no right to be on school property even if there should be disturbances.

   ___Definitely agree ___Undecided; probably agree
   ___Undecided; probably disagree ___Definitely disagree

3. Do you think policemen are pretty nice guys?

   ___Yes ___No ___Not sure

4. Do you think the police are mean?

   ___Yes ___No ___Not sure

5. Do you think that being a policeman is a job for an intelligent guy?

   ___Yes ___No ___Not sure

6. Would you like to be a policeman/woman?

   ___Yes ___No ___Not sure

7. Do you think people would be better off without police?

   ___Yes ___No ___Not sure

8. Do you think the city would be better off with more policemen?

   ___Yes ___No ___Not sure

9. Do you think police get criticized too often?

   ___Yes ___No ___Not sure

10. If you needed help would you go to a policeman?

    ___Yes ___No ___Not sure

11. Do you think police don't even give you a chance to explain?

    ___Yes ___No ___Not sure

Reprinted with permission from *Three Perspectives in Law-Focused Education* (Minneapolis: Minneapolis Public Schools, 1974), p. 331.

12. Do you think police think they are "big shots" because they wear a badge?

___Yes ___No ___Not sure

13. Do you think the police treat people alike?

___Yes ___No ___Not sure

14. Do you think that the police have it in for, or pick on young people?

___Yes ___No ___Not sure

15. Do you think the police treat blacks and whites alike?

___Yes ___No ___Not sure

16. Do you feel that the police are always picking on blacks?

___Yes ___No ___Not sure

17. Would you call the police if you saw someone breaking into a store?

___Yes ___No ___Not sure

18. Do you think criminals usually get caught?

___Yes ___No ___Not sure

Handout 26

NATIONAL RESULTS OF THE COP-O-METER

Statement	Def. Agree	Prob. Agree	Prob. Disagree	Def. Disagree
1	36%	15%	15%	33%
2	8%	8%	17%	66%

	Respondents	Yes	No	Not Sure
3	All students	70%	12%	17%
	Black students	43%	32%	25%
	White students	75%	9%	16%
4	All students	15%	66%	20%
	Black students	32%	40%	28%
	White students	11%	71%	18%
5	All students	54%	29%	17%
	Black students	43%	39%	17%
	White students	56%	26%	17%
6	All students	8%	78%	14%
	Black students	3%	90%	6%
	White students	8%	76%	15%
7	All students	6%	91%	3%
	Black students	n/d	n/d	n/d
	White students	4%	93%	3%
8	All students	63%	23%	14%
	Black students	52%	36%	12%
	White students	65%	20%	14%
9	All students	55%	31%	13%
	Black students	40%	44%	16%
	White students	58%	41%	13%
10	All students	57%	22%	21%
	Black students	51%	24%	22%
	White students	60%	13%	21%
11	All students	28%	54%	19%
	Black students	50%	30%	20%
	White students	23%	58%	19%
12	All students	27%	60%	13%
	Black students	57%	31%	13%
	White students	21%	66%	13%

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Statement	Respondents	Yes	No	Not Sure
13	All students	36%	53%	13%
	Black students	19%	70%	11%
	White students	38%	49%	13%
14	All students	34%	49%	17%
	Black students	52%	31%	17%
	White students	30%	42%	17%
15	All students	44%	39%	16%
	Black students	17%	68%	16%
	White students	45%	37%	18%
16	All students	16%	71%	12%
	Black students	51%	35%	14%
	White students	10%	79%	11%
17	All students	39%	30%	30%
	Black students	20%	49%	30%
	White students	40%	18%	32%
18	All students	72%	15%	13%
	Black students	67%	17%	16%
	White students	81%	10%	10%

Games

GUIDELINES FOR USING GAMES

Learning games tend to be so diverse that no general guidelines can be supplied for using them, other than to establish a climate in which everyone can have fun. A game can be a good ice-breaker for introducing a unit or workshop on the law, or it can serve as a self-contained learning experience.

Four examples of legal-education games are provided here: "Mock Crime," "The Crime Game," "Twenty Questions," and "The Buckle Game." All four can be used with groups ranging from elementary students through adults, although younger children may find "The Crime Game" rather complicated. Because the directions for staging the "Mock Crime" and playing "The Crime Game" are brief and simple, they have been incorporated into this introductory section. "Mock Crime" requires that Handout 27 be duplicated and distributed to students; "The Crime Game" makes use of Handout 28.

"Mock Crime"

Ask a person who is not very familiar to students to commit a mock crime. The person may choose to wear a disguise to avoid being recognized. Ask the person, at a prearranged signal, to enter the classroom, grab the teacher's purse or books or some other valuable item, and rush out the door. (If possible, ask the "criminal" to knock over a chair or drop a book on the floor in order to ensure that everyone in the class knows what is going on.)

After the "criminal" has fled, pass out copies of the "Witness Sheet" (Handout 27). While students are completing it, put the items to be described on the chalkboard. When students seem to have finished, ask them to describe the "criminal," listing on the board the full range of responses. Ask students if they, as police, could identify a suspect with this kind of information.

Following the discussion, ask the "criminal" to step back into the room. The descriptions are rarely accurate.

If desired, the "crime" can be a mock assault, using a track pistol as the weapon. In many cases, the seriousness of an attack with a gun upsets people so much that they have great difficulty identifying the "criminal." This variation should only be used with mature secondary students or adults.

"The Crime Game" is used with the permission of the Institute for Political/Legal Education.

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"The Crime Game"

"The Crime Game" requires students to communicate with each other (and as a result it is rather noisy) in order to gather information about a hypothetical murder.

To conduct the game, cut apart the clues in Handout 28 and give one to each student. (If the class is large, more than one copy of each clue may be needed.) Explain that their task will be to work in teams, using the various clues provided, to figure out the answers to the following questions:

1. Who was the killer?
2. What was the motive?
3. What was the weapon?
4. Who was killed?
5. When and where did the murder take place?

Divide the class into teams of five or six students and let them assemble the necessary clues. After about ten minutes of sheer chaos, write the questions regarding the crime on the board and ask students to fill in the answers.

Answer Key for Crime Game

1. Killer--Mr. Scott, with Mrs. Kelley as an accessory.
2. Motive--Get rid of husband.
3. Weapon--Knife.
4. Who was killed?--Mr. Kelley.
5. Where and when?--Mr. Scott's apartment, between 12:30 and 1:30 a.m.

Handout 27

WITNESS SHEET FOR "MOCK CRIME"

Directions: You have just witnessed a serious crime. You have been asked to provide a detailed description of the suspect. In the next five minutes, please use this sheet to give a description, including the following:

Height:

Weight:

Hair color:

Eye color:

Age:

Sex:

Clothing:

Any other distinguishing features:

Describe the crime:

Handout 28

CLUES FOR "THE CRIME GAME"

The elevator man went off duty at 12:30 a.m.

It was obvious from the condition of Mr. Kelley's body that it had been dragged a long distance.

Miss Smith saw Mr. Kelley go to Mr. Jones' apartment building at 11:55 p.m.

Mr. Kelley's wife disappeared after the murder.

Police were unable to locate Mr. Scott after the murder.

When police tried to locate Mr. Jones after the murder, they discovered that he had disappeared.

The elevator man said that Miss Smith was in the lobby of the apartment building when he went off duty.

Miss Smith often followed Mr. Kelley.

The knife found in Miss Smith's yard had Mr. Scott's fingerprints on it.

Mr. Kelley had destroyed Mr. Jones' business by stealing all his customers.

Mr. Jones had told Mr. Kelley that he was going to kill him.

Miss Smith said that nobody left the apartment building between 12:25 a.m. and 12:45 a.m.

Mr. Kelley's blood stains were found in Mr. Scott's car.

Mr. Kelley's blood stains were found on the carpet in the hall outside Mr. Jones' apartment.

When he was discovered dead, Mr. Kelley had a bullet hole in his thigh and a knife wound in his back.

Mr. Jones shot at an intruder in his apartment building at 12:00 midnight.

The elevator operator reported to police that he saw Mr. Kelley at 12:15 a.m.

The bullet taken from Mr. Kelley's thigh matched the gun owned by Mr. Jones.

Only one bullet had been fired from Mr. Jones' gun.

When the elevator man saw Mr. Kelley, Mr. Kelley was bleeding slightly, but he did not seem too badly hurt.

A knife with Mr. Kelley's blood on it was found in Miss Smith's yard.

The elevator man saw Mr. Kelley's wife go to Mr. Scott's apartment at 11:30 p.m.

The elevator operator said that Mr. Kelley's wife frequently left the building with Mr. Scott.

Mr. Kelley's body was found in the park.

Mr. Kelley's body was found at 1:30 a.m.

Mr. Kelley had been dead for one hour when his body was found, according to a medical expert working with police.

The elevator man saw Mr. Kelley go to Mr. Scott's room at 12:25 a.m.

TWENTY QUESTIONS

An interesting followup to "The Crime Game," particularly if students have had trouble gathering information and clues in the game, is this activity which teaches questioning skills. The individual parts may be used on different days or for a whole day's activity.

* * * * * * * * * * * *

Tell the class they must ask only "yes" and "no" questions of the leader. Then read the description of the "crime" to the class and let students take turns asking questions. You might want to set a limit of 20 questions at first, and extend the limit if necessary.

Crime 1: "Something of value was stolen today. You must find out what was stolen, where it was stolen, and who took it."

Answer: A girl's bicycle was stolen from a bike rack at school by the janitor. (Point out to the class what kinds of questions help gather the most information.)

Crime 2: "A bloody foot was found on a dirty bed in a small old cabin in an isolated woods area. Tracks were found in the snow near the cabin. You must discover the full plot of this little story."

Answer: The foot was a rabbit's foot. It was left on the bed by the trapper who used the cabin. The tracks were the tracks of sparrows looking for seeds. (Point out to the class that not all facts are relevant to a case.)

Crime 3: "A man was found murdered in his suburban home. The yard was heavily shaded with trees and hedges. There were no human or animal footprints. There were no tire tracks on the dirt driveway. Bloodhounds could pick up no trail. You must discover who the man was, how he was killed, the motive for the murder, and the identity of the murderer."

Answer: The victim was a policeman. He was shot in the front of the head with a police pistol. The victim had just learned that his partner was accepting bribes. He planned to report his partner to the police captain. So, his partner came to the front door, knocked, and shot the victim when the victim came to the door. The partner came to the scene and left the scene on a pogo stick. He bounced from his car on the street to the front door and back. The next morning the body was "discovered" by the partner who claimed he was going to give the victim a ride to work.

Adapted with permission from *Kids, Cops, Courts, and the Law*, by Clint Fretland and Jennifer Maxwell (Miles City, Mont.: Project Legal Alertness and Awareness, n.d.), p. 107.

THE BUCKLE GAME

"The Buckle Game" was designed to help students understand the need for laws. Here are a few suggestions for conducting the game:

1. Answer students' questions vaguely; don't volunteer any information.

2. The item to be used in the game *must* be inherently useless. In this version a buckle is used; other possibilities are a branch, a button, a piece of macaroni, a bean, a burnt kitchen match, a two-inch length of rope, and so on. Experience with this game has shown that when presented with a handful of paper clips, for example, students may attempt to string them together. If this sort of thing happens at the beginning, the whole point of the game may be lost. (It is also possible that inventive youngsters may surprise you, but this cannot, obviously, be predicted beforehand.)

3. In Game 4 you must interrupt the progress of the game with new rules. These rules may be as unreasonable as you choose; for example, you have to stand on one foot as you pass the item, you must whistle while passing the item, etc.

4. The intent of the game is to draw from students the admission that rules (laws) are necessary to an orderly game and, by extension, to an orderly society. If it appears that students are losing interest, feel free to jump ahead to Game 4. It is also possible to compress all the games into one, without stopping between games to discuss the problem. These considerations depend on the age level and maturity of the students involved. The teacher will be able to advise the resource person about these student characteristics.

5. For the most part, the entire game should require about 15 to 20 minutes, not including discussion. For younger elementary students, a much shorter game may be necessary.

Game 1: Pass out the buckles to each of the participants and tell them to play. Watch them as they try to figure out the purpose of the game, to develop their own games, or to question what to do. Stop at this point and ask them, "What's the matter?" Discuss the idea that a game must have a purpose and certain rules and structure for everyone to follow.

Game 2: Solicit rules for Game 1 from the group, taking as many as you can, and list them on the blackboard. Watch the participants as they see that the rules begin to contradict each other and become more difficult to follow. After the rules are written, ask them to play the game now that they have rules. They will try to follow the rules but reach a frustration point. Then stop and discuss the problems that too many rules cause and what kind of rules you need to play a game.

"The Buckle Game" is based on an activity developed by Bob Portune.

Game 3: Ask the group to pass all the buckles to one chosen person in the class. Then declare that person the winner. Ask, "Does this bother anyone?" Discuss the arbitrary decision on the part of the teacher and why arbitrary rules are unfair.

Game 4: Divide the group into equal teams for a relay race. Tell them that they have been complaining about the rules of the other games, so now you will give them a purpose and definite rule. Tell them to pass the buckle back over their shoulders all the way down the line and that the first team to reach the end wins the game. Start them, but when they reach the middle of the line stop them and tell them that you forgot one rule. Make up another rule and start them again. Repeat this procedure a few more times until they reach a frustration point. Then ask them to discuss what is wrong with these kinds of rules. (You can get into a discussion of ex-post-facto laws, if you desire.)

The discussion afterward can also bring out the fact that life must have clear rules, understood by all beforehand and fair to all involved.

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Police Activities

GUIDELINES FOR USING POLICE ACTIVITIES

Understanding and respect for the legal system are based in large part on positive and realistic attitudes toward people who have been delegated to enforce laws and statutes. In order to develop such attitudes, it is necessary for students to be in contact with law-enforcement officers in nonthreatening and nonadversarial settings.

Past generations of students may have taken for granted from their earliest school days that the police officer was their "friend"--the familiar and jovial fellow who walked the neighborhood beat, helped schoolchildren cross busy streets, and was always available to supply directions or minister to a skinned knee. Today, however, all too often a student's initial contact with a law-enforcement officer comes as a result of "getting into trouble."

Many police and sheriffs' departments, of course, are concerned about the implications of changes in the patterns of interaction between law-enforcement officers and citizens of all ages, and many have established community-relations departments and various kinds of programs designed to provide opportunities for positive interface.

One option for accomplishing this objective is to arrange for law-enforcement officers to come into school classrooms and talk to students about their work. An even more effective strategy is to present students with opportunities to role-play police officers who are faced with various hypothetical situations. Although such simulation activities can be led by the teacher or any resource person, they are most realistic and engaging when the leader is involved with law enforcement on a day-to-day basis.

Four police role-play activities are described in this section, along with two activities focusing on the qualifications of a police officer and three handouts containing information about the duties and responsibilities of a typical officer.

WHAT SHOULD A POLICE OFFICER BE?

This is a good introductory activity for elementary students. With secondary students, the next activity, "What Should Be the Qualifications of Police?," would be more appropriate.

* * * * * * * * * * * * *

1. Ask students to (1) draw a picture of a police officer; (2) under the drawing, write a sentence describing the police officer.

2. After collecting all the pictures, ask each student to tell the rest of the class about his or her picture and to describe the police officer. Record the statements (e.g., "tall," "strong," "friendly") on the chalkboard. Be sure to eliminate duplicate statements.

3. Read through the list aloud, with students following along. For each entry, ask students to raise their hands if they feel the described characteristic is "not very important," "important," or "very important." From time to time ask individual students why they think this trait is important or not important. Count responses and tabulate the information on the board.

4. At this point the person conducting the activity should describe, in simple terms, the qualifications that most police departments require for their personnel. Then ask students to compare their qualifications with those of the department. Which do they feel are better qualifications?

5. The activity may be ended at this point; however, if you want to extend it, you might then ask students to think of what kinds of tasks the police are asked to perform. If major tasks have been omitted, the resource person should fill in any gaps (see Handouts 35-37). Then ask them to match these tasks with the qualifications they've decided on. Do they need to revise their list of qualifications?

Adapted from an activity developed by Mary Naylor which originally appeared in *Focus on Law* 2, no. 7, p. 7. Used with permission.

WHAT SHOULD BE THE QUALIFICATIONS OF POLICE?

This introductory activity for secondary students and adults is based on a table developed by a former chief of police as an instrument for objectively assessing the qualifications of people applying to be police officers (see Handout 29).

* * * * * * * * * * * *

Distribute copies of Handout 29 and let the students (role-playing applicants) score themselves, following the directions on the handout. Point out that a minimum score of 240 is needed to qualify.

Then raise the following questions for discussion:

1. Do you think that using this scoring method alone would be a good way of choosing police officers? Why? (Or why not?)

2. What else would you want to know about someone who had applied to become a law-enforcement officer?

3. What kinds of tests do you think applicants should have to pass before entering training to become a law-enforcement officer? Why?

4. How would using this scoring method affect the chances of women who wanted to become police officers?

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Handout 29

SCORING TABLE FOR POLICE QUALIFICATIONS

Directions: Using the column on the left as a guide, give yourself percentage scores for age, height, and education. Add the three percentage scores. A total of 240 or more is needed to qualify.

% Score	Age	Height	Education
100	21	6'1"	Master's degree in criminology
98	22	6'0"	
95	23	5'11"	Master's degree
90	24	5'10"	Bachelor's degree
85	25	5'9 1/2"	3 years of college
80	26	5'9"	2 years of college
75	27	5'8 3/4"	1 year of college
70	28	5'8 1/2"	High school graduate
65	29	5'8"	
55		5'7 3/4"	3 years of high school
50	30	5'7 1/2"	
45		5'7 1/4"	
40	31	5'7"	2 years of high school

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WHAT WOULD YOU DO?

The four activities described here give students the opportunity to experience some of the situations that a police officer typically encounters and to familiarize themselves with an officer's dilemmas and frustrations. The student materials needed are provided in Handouts 30-34.

"Officer on the Beat" is a multiple-response quiz that students can complete individually or in teams of two. (If the latter option is used, explain that both members of each team *must agree* on every answer.) Distribute copies of Handout 30 to the students. After all the students have completed the quiz, focus an all-class discussion on the questions, encouraging students to support their answers with reasons.

"On the Job" presents four role-playing situations (Handout 32) along with a brief list of instructions (Handout 31). Each hypothetical situation describes only the players, the scene, and the beginning action; students are thus allowed considerable freedom to develop their scenarios. You may assign roles to students or ask for volunteers. Cut apart copies of Handout 32 and give each student a description of the situation to which he or she has been assigned, in addition to a copy of Handout 31. As an extension activity, the resource person might want to ask students to describe actual situations in which they feel that law-enforcement officers did not act properly. These situations can be used to role-play alternative (and presumably better) courses of action.

"Investigation 1" and "Investigation 2" require students to determine the correct sequence of events during a hypothetical investigation. "Investigation 1" provides all the individual events for each case (Handout 33); "Investigation 2" (Handout 34) requires students to *infer* the events. An answer key showing the correct sequence of events in each of the two cases in "Investigation 1" is provided here.

Correct Sequence of Events, Case 1

1. Robert Putnam breaks three glass windows at a school one block from his house.

2. One of Robert Putnam's neighbors sees him break the school windows and calls the police.

3. The police talk to the neighbor, who says she will file a complaint and testify at a juvenile hearing.

4. The police visit Robert Putnam at his home and discuss his whereabouts at the time the neighbor says he broke the window.

5. The police are not satisfied with Putnam's story and arrest him for vandalism.

6. Robert Putnam is taken to the police station and then transferred to the juvenile unit operated by the police.

7. The next day Robert Putnam is taken to see a probation officer.

8. At the intake hearing it is decided that Robert should pay the cost of fixing the windows and be released to his parents, because he did not enter the building and it was his first offense.

Correct Sequence of Events, Case 2

1. Mr. J. is driving home from a swinging party and he is smashed. He has had so much to drink that he feels as though he is swimming.

2. Mr. J. swerves on the road and knocks down a streetlight but does little damage to his truck.

3. Two police officers in their patrol car witness the incident and pursue the truck.

4. Mr. J. pulls his truck over to the side of the road because a police car is following him with the red light flashing.

5. Mr. J. is asked for his license by the officers.

6. Mr. J. is asked to step out of the truck and walk to the police car.

7. Mr. J. is taken to the police station for a blood test.

8. The blood test shows that Mr. J. has alcohol in his blood beyond a legal limit, and he is arrested for drunken driving.

9. Mr. J. is booked.

10. Mr. J. makes an appearance the next day before a judge. This is the first time he appears in court.

11. Mr. J. is released on bail and attends a preliminary hearing three days later.

12. Charges are filed with the court by the prosecutor who represents the government.

13. Mr. J. is asked whether he wants a trial by judge or a trial by jury.

14. Mr. J. pleads guilty to the charge of drunken driving.

15. Mr. J. is fined $100 by the judge.

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Handout 30

OFFICER ON THE BEAT

Directions. This handout contains descriptions of 11 situations that a police officer might face. Read each one, decide what you would do if you were that police officer, and circle the number that represents your choice.

1. In the heat of summer you are turning off a fire hydrant in a crowded urban neighborhood. Children are taunting and teasing you, young girls are joking, and the older people are watching. You slip and fall in the puddles in the street. The crowd laughs. WHAT WOULD YOU DO?

    1. Get up and laugh too.
    2. Threaten arrests if anyone turns the hydrant on again.
    3. Quickly and quietly get away in squad car.
    4. Tease the kids.
    5. Other (specify):

2. A teenager steals a car. You are in pursuit. You turn your siren on. Rather than slowing down, the teenager increases his speed. When you pull alongside him, he laughs and tries to cut you off. WHAT WOULD YOU DO?

    1. Curb the car even though it may mean personal injury and property damage to both the teenager and policeman.
    2. Fire warning shots and if that doesn't stop the car, aim at the tires.
    3. Take the license number and allow the teenager to get away.
    4. Call for additional help from fellow officers and then just keep close to the speeder.
    5. Other (specify):

3. You and another officer respond to a call from a woman who telephoned that three men were burglarizing another apartment in her apartment house. You charge up to the door of the apartment that supposedly is being burglarized, bang on the door, and call out, "Open up, police!" No one opens the door. WHAT WOULD YOU DO?

    1. Kick in the door with a drawn gun and prepare to fire the gun.
    2. Surround the apartment house and wait for the culprits to come out.
    3. Return to the car and ask for police dogs to assist in the search.
    4. Question the apartment resident who called the police to find out more information.
    5. Other (specify):

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4. You are driving up a street in a district other than your own. You observe a man speaking, singing, and brandishing a butcher knife. You order the man to drop the knife. The man advances. He continues to advance. WHAT WOULD YOU DO?

   1. Attempt to disarm the man.
   2. Get back into the car and call for help.
   3. Order the man to throw down his weapon or you will shoot.
   4. Request help from police, family, minister, neighbors, etc., in the hope that you will persuade the man to throw away his knife.
   5. Other (specify):

5. You approach a university student on your beat who is making a speech during an election campaign at a busy intersection. He makes derogatory remarks about the president, the mayor, and the American Legion. The minute he sees you he turns to the crowd and yells, "Here comes a dirty fascist pig!" WHAT WOULD YOU DO?

   1. Continue on your beat as if you didn't hear what was said.
   2. Challenge the youth to back up his name calling with facts.
   3. Arrest the youth for obscenity in public.
   4. Call for additional police help because the speaker is attempting to incite a riot.
   5. Other (specify):

6. A well-dressed woman approaches you while you are on duty. "Officer," she says, "I need your help. I just bought this transistor radio and now it doesn't work. Will you accompany me to the store and help me get it repaired or get a new one or get my money back?" WHAT WOULD YOU DO?

   1. Accompany the woman to the store in the hope that the consumer's gripe can be corrected.
   2. Ignore the woman--she is evidently kooky.
   3. Suggest to the woman that she go to the store's complaint department on the fourth floor.
   4. Sympathize with the woman but explain that her complaint is not a police matter.
   5. Other (specify):

7. It's ten o'clock on a cold winter night. You are walking your beat. You notice that a car is parked in front of a liquor store. The lights in the store are out, but the door seems to be unlocked. At the moment you try it, the man from the corner newsstand comes up and says, "Two men with guns went in there. I think the old man who owns it is still there." WHAT WOULD YOU DO?

   1. Cautiously open the door and say, "Police, come out with your hands up."
   2. Quickly call for help, stay outside the store, and wait for more police to arrive.

3. Fire warning shots, then call out, "You're under arrest."
4. Question the witness about the proprietor and whether the witness had actually seen the men enter the store, then call for help.
5. Other (specify):

8. You are patrolling a department store. You see a teenage girl pick up a scarf from a counter. She slips it into her raincoat pocket and leaves the store. You follow her out, stop her, and ask her to take the scarf out of her pocket. She says, "Look, I've never done anything like this before. I've never been in any kind of trouble. Couldn't we put the scarf back and forget the whole thing?" WHAT WOULD YOU DO?

   1. Hope that the girl is sincere and allow her to return the scarf without pressing charges.
   2. Let the girl go but tell her that you will call her parents.
   3. Arrest her because it is the law.
   4. Arrest the girl to impress her on the seriousness of her act; however, after making the record, reprimand her and release her to her parents.
   5. Other (specify):

9. You are in your patrol car. A red car speeds by. The car has no muffler, and it is speeding. You pull up to the car and stop it. You ask the driver for his license. The driver reaches into his pocket. He pulls out a $20 bill. "Officer, you're a nice guy," he says. "Take this and let's forget the whole thing." There is no one else around. WHAT WOULD YOU DO?

   1. Arrest the man for speeding and attempting to bribe a police officer.
   2. Give the man a ticket for speeding and ignore the $20 bill.
   3. Take the $20 bill after making a driver's license check and learning that this man, who has six children, will lose his license with another offense.
   4. Listen to the fellow, do a license check, and after hearing his tale of woe let him go with a warning and his $20 bill.
   5. Other (specify):

10. You have had a long day. You get off your shift at 6 p.m. You start walking home You are very tired. A few blocks from home, you see a large group of teenagers. They are drinking beer. "Hey, look at the pig!" one of them yells. "Oink, oink, oink!" they all start shouting. One of them throws a beer can. It bounces right in front of your feet. "Oink, oink, oink!" They are laughing. WHAT WOULD YOU DO?

    1. Identify the most obnoxious teenager and arrest him or her for drinking alcoholic beverages when under age.
    2. Continue on your way as if nothing happened.

3. Stop, and warn the teenagers that you are calling for help.
4. Go home and call the local squad car to investigate the situation.
5. Other (specify):

11. You are a foot patrolman. Your younger brother is in a street gang. You get to know the other members of the gang. They talk with you and tell you what's happening in the neighborhood. They think you're okay. For a long time the gang stays out of trouble. Then one day your brother tells you, "There's going to be a fight." Another gang has challenged your brother's gang. "Don't try to break it up," your brother says. "If you do, they will know I told you. They'll beat me up and kick me out of the gang. They'll think you're a traitor, and they'll never talk to you again." WHAT WOULD YOU DO?

    1. Alert the department to the potential problem, regardless of your brother's welfare or your status with the gang.
    2. Try to reach the gang leaders with some alternative activity at the same time as the planned gang fight.
    3. Alert the police to the planned fight and then arrange for a trip for both you and your brother at the same time.
    4. Do nothing, hoping that the planned fight won't take place and that even if it does your influence will not be jeopardized for good in the future.
    5. Other (specify):

Handout 37

PRECINCT TIME LOG

Incidents in the 20th precinct, New York City Police Department, ranked in order of total time spent per incident, 1967–68

Incident type	Number of incidents	Total time (in minutes)	Average time (in minutes)
1. Sick	4,552	202,143	44.4
2. Other	5,629	162,310	28.8
3. Other misdemeanors	1,190	106,034	89.1
4. Dispute	3,582	106,016	29.6
5. Burglary	2,518	104,881	41.7
6. Unfounded	5,132	102,881	20.7
7. Dead on arrival	402	60,126	149.8
8. Injured	1,170	46,063	41.1
9. Intoxicated person	1,555	41,830	25.9
10. Disorderly groups	1,693	37,780	22.3
11. Robbery	512	33,476	65.4
12. Auto accident	547	32,943	60.2
13. Alarm of fire	1,013	30,483	30.0
14. Felonious assault	309	26,982	87.5
15. Auto accident—injury	286	25,334	88.6
16. Larceny from auto	514	17,579	34.2
17. Malicious mischief	435	16,261	37.4
18. Utility trouble	378	14,502	38.4
19. Narcotics	59	13,582	230.2
20. Auto larceny	104	12,556	120.7
21. Grand larceny	235	11,598	49.4
22. Other felonies	64	9,559	149.4
23. Motor vehicle recovered	73	7,221	98.8
24. Traffic violation	270	7,201	27.1
25. Vehicles mechanical trouble	201	7,201	35.8
26. Accidental alarm	264	6,873	26.0
27. Grand larceny—pocketbook snatch	130	6,366	48.9
28. Auto safety check	126	4,175	33.1
29. Prowler	121	3,549	29.3
30. Dangerous condition	81	3,510	43.0
31. Found persons	46	2,802	60.9
32. Auto accident—serious injury or death	13	2,587	199.0
33. Arrest—serving summons	81	2,480	30.6
34. False alarm of fire	86	1,865	21.7
35. Property recovered	35	1,848	52.8
36. Homicide	6	1,744	290.6
37. Rape	29	1,622	55.9
38. Weapons	9	1,298	144.2
39. Missing persons	24	1,096	45.7
40. Prostitution	7	1,090	155.7
41. Attempted suicide	13	1,056	81.2
42. Gambling	7	813	116.1
43. Traffic court warrants	40	713	17.8
44. Suicide	6	607	101.2
45. ABC violation	5	160	32.0

Incidents in the 20th precinct, New York City Police Department, ranked in order of frequency of occurrence, 1967–68

Incident type	Number of incidents	Total time (in minutes)	Average time (in minutes)
1. Other	5,629	162,310	28.8
2. Unfounded	5,132	102,881	20.0
3. Sick	4,552	202,143	44.4
4. Dispute	3,582	106,016	29.6
5. Burglary	2,518	104,881	41.7
6. Disorderly groups	1,693	37,780	22.3
7. Intoxicated person	1,555	41,830	25.9
8. Other misdemeanors	1,190	106,034	89.1
9. Injured	1,170	46,063	41.1
10. Alarm of fire	1,013	30,483	30.0
11. Auto accident	547	32,943	60.2
12. Larceny from auto	514	17,579	34.2
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17. Felonious assault	309	26,982	87.5
18. Auto accident injury	286	25,334	88.6
19. Traffic violation	270	7,201	27.1
20. Accidental alarm	264	6,873	26.0
21. Grand larceny	235	11,598	49.4
22. Vehicle mechanical trouble	201	7,201	35.8
23. Grand larceny—pocketbook snatch	130	6,366	48.9
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26. Auto larceny	104	12,556	120.7
27. False alarm of fire	86	1,865	21.7
28. Arrest—serving summons	81	2,480	30.6
29. Dangerous condition	81	3,510	43.0
30. Motor vehicle recovered	73	7,211	
31. Other felonies	64	9,559	149.4
32. Narcotics	59	13,582	230.2
33. Found person	46	2,802	60.9
34. Traffic warrants	40	713	17.8
35. Property recovered	35	1,848	52.8
36. Rape	29	1,622	55.9
37. Missing persons	24	1,096	45.7
38. Auto accident—serious injury or death	13	2,587	199.0
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40. Weapons	9	1,298	144.2
41. Prostitution	7	1,090	155.7
42. Gambling	7	813	116.1
43. Homicide	6	1,744	290.6
44. Suicide	6	607	101.2
45. ABC violation	5	160	32.0

Field Trips

GUIDELINES FOR PLANNING FIELD TRIPS

Many teachers have found that field-trip experiences are especially helpful in developing an understanding of legal processes. Visits to private law offices or government agencies can often be arranged by teachers themselves, with or without the assistance of attorneys familiar with the courts and courtroom procedures. Many local and state bar associations conduct courtroom tour programs; a telephone call to the local bar association office may provide information about such a program.

The American Citizenship Committee of the Colorado Bar Association offers the following suggestions to individual attorneys who have been asked to conduct courtroom tour programs.

1. Explain to teachers that court schedules are unpredictable and subject to last-minute changes. Often, teachers will have to arrange for transportation and permits weeks in advance of the tour date. It should be made clear to teachers that a courtroom tour does not guarantee that a class will be able to view an actual court proceeding.

2. At least one week before the tour date, contact the clerk of the court to arrange for an empty courtroom and to check on upcoming trials or proceedings. If appropriate, judges, district attorneys, or public defenders could be asked to discuss their roles in the legal system at some point during the tour.

3. Arrange to meet the class at the empty courtroom. Introduce students to the courtroom by explaining the design of the courtroom as well as the roles of attorneys and the various officials of the court. If no trials are available for observation, you might use a simple factual situation (e.g., traffic violation, contract, tort) to illustrate the various roles of persons in the courtroom (e.g., witnesses, jurors, attorneys). Having students sit in the jury box, witness stand, and at counsel's table is especially helpful in generating interest in the tour.

4. If possible, try to have a judge address the students. ACC's experience indicates that most judges are happy to meet with students to discuss Colorado courts.

5. If you are fortunate enough to have a trial in progress, try to find out about the case beforehand and brief the students before entering the courtroom. Often the presiding judge is willing to address the class and explain the proceedings.

Adapted with permission from an article by William E. Walters III, Assistant Attorney General for the State of Colorado.

6. In addition to a courtroom visit, the other services of the courthouse should also be introduced. The law library and clerk's office are two examples of such services. County government offices might also be visited during the tour.

The primary purposes of a courtroom tour are to:

--Introduce the participants to the judicial system.

--Demonstrate the importance of active participation by citizens in their judicial system.

--Explain and demonstrate the roles of attorneys and other participants in the legal system.

--Answer questions about the legal system and the roles of attorneys.

The following outline may be used as a guide for planning a courtroom tour:

Tour Planning Outline

1. Visit an empty courtroom
    a. Whenever possible, first bring the students into an empty court. (The clerk of the district court can often obtain the courtroom for you.)
    b. Explain the design of the courtroom and the roles of the various officials of the court and of the attorneys.
    c. If possible, arrange for one of the district court judges to talk to students about the roles of individuals in the legal system.
2. Visit an actual trial
    a. Find out about the case in advance.
    b. It may be necessary to visit more than one courtroom.
3. Visit the law library
    a. Demonstrate and explain the various sources of law.
    b. Demonstrate attorneys' tools of the trade.
    c. Explain the functions of attorneys in the legal system.
4. Visit the clerk of the court's office

Here is a checklist of things to do prior to the tour:

_____ 1. Contact another attorney if more than one guide will be needed for the tour.

_____ 2. Contact the teacher or coordinator at least one week before tour to complete arrangements on meeting time and place and to obtain information about the tour group.

_____ 3. Check court dockets for:

  a. Empty courtroom to visit.

  b. Trial(s) to observe.

_____ 4. Alert various court bailiffs, clerks, etc. about the tour group.

_____ 5. Contact a district judge to speak to the group. (Optional)

Other Strategies

GUIDELINES FOR USING OTHER STRATEGIES

The guidelines in this section offer suggestions for other strategies that a resource person may wish to use in a classroom. For the most part, these strategies require no prior preparation other than establishing or identifying an issue or topic. Any support materials that may be required can be accumulated from other sources by students as a normal research procedure.

The resource person, in preparing for these activities, should plan to work with the teacher to determine the amount of time that will be required for students to prepare for the activities as well as the time needed to conduct the classroom session.

Panel Discussions

A panel discussion is designed to provide an opportunity for a group to hear several people who are knowledgeable about a specific issue or topic present information and discuss their personal views. A panel discussion may help the audience further clarify and evaluate their positions in regard to the specific issues or topics being discussed and increase their understanding of the positions of others.

How to Proceed

1. Identify, or help participants identify, an issue or topic that involves an important conflict in values and/or interests. The issue or topic may be set forth as a topical question, a hypothetical incident, a student experience, or an actual case.

2. Select panelists who are well informed about and have specific points of view about the issue or topic. A panel discussion that includes three to five panelists is usually most workable. Select a leader or moderator.

3. Indicate to panelists what objectives the panel discussion is designed to promote and allow time for panel members to prepare for the discussion. For some topics ten or fifteen minutes may be sufficient time for preparation, while in other situations panel members may need to prepare several weeks in advance of the scheduled discussion. The teacher will be able to advise the resource person about time requirements.

4. Decide on the format that the panel discussion will follow. Various formats are appropriate. The following procedures have been used effectively:

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a. The leader or moderator introduces the topic, and the panelists present their views and opinions about the issue or topic for a set amount of time.

b. The panelists discuss the issue or topic with each other by asking questions or reacting to the views and opinions of other panel members. A specific amount of time should be established.

c. The leader or moderator closes the discussion and provides a summary of panel presentations and discussion.

d. The leader or moderator calls for a forum period, during which members of the class may participate by addressing questions to various panel members or by voicing their views and opinions. The forum period should be conducted by the panel leader or moderator.

Principal Responsibilities of the Resource Person

1 Identify, or help participants identify, issues or topics on which to base a panel discussion.

2. Ensure that all panelists and the moderator are familiar with the procedures for panel discussion in advance of the discussion itself, so that they will be able to fulfill the responsibilities of their roles.

3. Assist panelists and other participants (when necessary) in preparation for the discussion by directing them to various source materials, authorities in the field, etc.

4. Help participants understand the need for fair procedures in discussing an issue or topic; e.g., the freedom to discuss an issue, the obligation to listen to other points of view, the need for orderly and courteous discussion.

Debates

A debate can be an effective instructional method for helping students present and evaluate positions clearly and logically. A debate begins with the debaters' having developed or been assigned a position on an issue. The intention of each debater is to persuade others that his or her position is the proper one. (In this way debate differs from discussion, which often calls for the cooperative thinking of members of a group in search of a solution or approach to a problem or issue.) A specific example of a way in which debate might be a useful method is as a follow-up to a policy-making exercise. Participants who do not agree with the adopted policy might use the debate as an effective means of trying to change public opinion, which might in turn lead to a change in policy.

How to Proceed

1. Decide, or help students decide, on a subject for debate.

2. Formulate the subject into a resolution; e.g., "Resolved: that capital punishment should be abolished by the U.S. Supreme Court."

3. Make certain that those participating in the debate are familiar with the procedures to be followed. (The form of debate described here is widely used but rather formalized. The purpose of the debate may make it desirable to use a less-formal procedure or to use some other form of debate.)

4. Select participants to take part in the debate. Divide the debaters into two teams, one team in support of the resolution (pro) and one team in opposition to the resolution (con). The most common number of members per team is two, but more than two may be used.

5. Select a chairperson and a timekeeper.

6. Allow sufficient time for participants in the debate to prepare "constructive arguments." A constructive argument should be based on from three to five major points which are logically developed and substantiated by factual evidence in support of a particular position. "Sufficient time" can be determined by conferring with the teacher.

7. Conduct the debate according to the following procedures:

a. The chairperson and the debaters are seated at the front of the class, usually with the team in favor of the resolution to the right of the chairperson and the team in opposition to the resolution to the left of the chairperson.

b. The chairperson briefly introduces the subject and states the resolution that is to be debated.

c. The chairperson introduces the first speaker from the team in support of the resolution. Each speaker is introduced when he or she is given the floor.

d. The first speaker from the team in support of the resolution is allowed a set amount of time to present the constructive argument he or she has prepared. The timekeeper, seated with the class, indicates when the time limit has been reached.

e. The first speaker from the team in opposition to the resolution is introduced and asked to give his or her constructive argument. This procedure of presenting pro and con speakers alternately is continued until each debater has given his or her constructive argument. After the first speaker, those who follow will probably need to adjust their prepared speeches to allow for what has been said by preceding speakers.

f. "Rebuttal arguments" follow the series of constructive arguments given by both teams. The team in opposition to the resolution always begins the rebuttal argument series. Each debater is given an opportunity to speak extemporaneously for a set amount of time (usually less than the time allotted for original arguments), attempting to weaken the position presented by the opposing team. Rebuttal arguments also provide an opportunity to answer attacks that have been made by the opposing team. While rebuttal arguments are presented extemporaneously, debaters should anticipate possible positions the opposition might take and be prepared with appropriate counter arguments. *No new issues may be introduced during rebuttal arguments.*

8. Debrief and/or evaluate the debate and the performance of the debate teams by informally polling the class to determine how many agree with the team in support of the resolution and how many agree with the team in opposition to the resolution. Class members should be asked to explain whether or not their own positions were strengthened or changed as a result of hearing the debate and to explain why. Class members should also be asked to make statements which they feel could have been used as effective arguments by the debaters.

Principal Responsibilities of the Resource Person

1. Select, or help participants select, a subject or question for debate.

2. Ensure that participants are familiar with the procedures for conducting a debate.

3. Help participants see the dimensions of the problem and develop clear, logical, and supportable arguments for the positions they present during the debate.

4. Help participants gain an understanding of some of the objectives which can be achieved by debate. These objectives include learning to make convincing arguments from another frame of reference than one's own, as might be the case if one is debating a position that does not correspond with one's true position. This experience may further develop participants' abilities to understand and respect the rights of individuals to hold opinions and beliefs that are different from theirs.

Policymaking (or Rule-Making) Exercises

Policymaking exercises are designed to help students learn to formulate policies or rules to be used for specific purposes. The policymaking exercises may focus upon the development of policies to deal with recurring real or hypothetical issues on such topics as environmental pollution or fair housing.

How to Proceed

1. Identify, or help students identify, an issue which involves an important conflict of interests or values for which policies need to be developed. The issue may be set forth as a topical question, a hypothetical incident, a student experience, or an actual case.

2. Guide students to suggest a number of tentative policies to cover the issue. Policies may be developed individually or in small groups. Lead a discussion designed to clarify the ideas and alternatives included in these proposed policies. Help students refine their tentative policy statements on the basis of this discussion. Policy statements should be written so that they can be applicable to situations similar to the identified issue.

3. Conduct a discussion which helps participants (a) clarify the various interests and values involved in the issue, (b) make explicit their reasons for the policy they have developed, and (c) explain the advantages and disadvantages of the tentative policies that have been developed.

4. Have participants adopt by majority vote one or more of the tentative policies. Indicate that majority vote is merely a practical way to decide an issue, that minority criticism of majority policies is not only acceptable but desirable, and that there must be periodic opportunities to review and modify adopted policies.

5. Conclude the policymaking exercise by leading a discussion in which participants suggest ways in which the adopted policies might be enforced and ways in which conflicts resulting from the interpretation and/or the application of the policies might be managed. Advantages and disadvantages of enforcement and conflict management procedures should be analyzed. Procedures may also be adopted by majority vote.

6. (Optional.) Additional resource persons may be called upon to react to the policies that have been adopted. For example, a school board member could analyze a proposed school-board policy on the basis of his or her knowledge and understanding of existing policies and his or her estimate of the feasibility of proposed policies.

Principal Responsibilities of the Resource Person

1. Identify, or help students identify, issues for which a policy needs to be developed.

2. Help students see the dimensions of an issue by focusing on the facts, ideas, interests, and values involved.

3. Help students develop and refine policies so that they are applicable to a number of similar situations.

4. Help students identify the advantages and disadvantages of the proposed policies and decide on policies they wish to adopt, supporting their decisions with explicit reasoning.

5. Help students suggest procedures for implementing adopted policies.

6. Help students better understand the policymaking process and the procedures which facilitate the process, including the freedom to discuss the issues, the obligation to listen to other points of view, and the need for orderly and courteous discussion.

Legislative Hearings

Legislative hearings are held by committees of the U.S. Congress and other legislative bodies to gather information on which to base recommendations about subjects regulated by law or for which laws are being considered. These hearings are a basic function of the legislative branch of government. Role-playing a legislative hearing provides students with an opportunity to gain an increased understanding of the purposes and procedures of such hearings and the roles and responsibilities of committee members. Students also gain experience in identifying and clarifying the ideas, interests, and values associated with the subject being discussed by the legislative hearing.

How to Proceed

1. Identify, or help students identify, a subject to be discussed in a legislative hearing. The subject should be related to the concept being studied; e.g., a hearing on government data banks and the right to privacy.

2. Assign the following roles:

a. Legislators. Six legislators is a practical number for a committee, but this number may be varied to meet class requirements. One legislator should be designated chairperson.

b. Witnesses. The number and nature of the witnesses will depend upon the subject being discussed. Witnesses should represent differing points of view and various interests and values. It may be desirable to include as many class members as possible as witnesses or constituents of witnesses who represent special-interest groups.

c. Recorder. One person should be selected to keep a record of proceedings and present a review of recommendations.

3. Explain to students the purpose of the legislative hearing and the procedures to be followed.

4. Allow time for students to prepare for the legislative hearing in accordance with their assigned roles.

5. Conduct the legislative hearing, using the following procedures:

a. The committee chairperson calls the legislative hearing to order, announces the purpose of the hearing, and calls the witnesses to testify.

b. Witnesses are called. Each witness is permitted a set amount of time to present an opening statement, which is followed by questions from members of the committee. The chairperson is the first to question the witness, followed by each of the other members of the committee. A committee member may interrupt to ask a question or make a comment at any time during the proceedings. The following time limits are suggested: from two to five minutes for a witness's opening statement and from five to ten minutes for a legislator's questioning.

c. After the witnesses have been heard, members of the committee review the testimony, discuss the problem, and make recommendations or decide what their next step shall be.

Legislative Debates

Debate is often used productively in the formulation and development of laws. Role-playing a legislative debate provides students an opportunity to increase their understanding of the purpose and value of the power of legislatures to make laws and to debate matters of public policy.

How to Proceed

1. Identify, or help students identify, a debate topic or issue.

2. Organize the role-play of a legislative debate by considering the entire class as the legislative body, with the instructor or resource person assuming the role of the presiding officer. Legislators may then be assigned to groups representing various positions in regard to the issue.

3. Allow time for each group of legislators to meet independently to elect a chairperson and secretary and to write a proposed bill designed to alleviate problems raised by the issue. As each group completes the writing of its proposed bill, the chairperson reports to the presiding officer and asks that the bill be placed on the agenda. Bills should be placed on the agenda in the order in which they are received. A set amount of time for the preparation of proposed legislation will need to be established.

4. Conduct the legislative debate, using the following procedures:*

   a. The presiding officer calls the legislature to order, indicates that all votes will be decided by a simple majority, announces the issue, and opens the debate.

   b. The first bill on the agenda is introduced by the group's chairperson or by an individual who has been delegated this responsibility by the chairperson. The group spokesperson stands, addresses the presiding officer, and describes the bill the group has written.

   c. After the chairperson or group spokesperson has completed presentation of the bill, he or she may remain standing and recognize two other members of the group who may then make additional comments on the bill.

   d. The bill is discussed and debated by the legislature. Representatives from other groups may ask questions, offer criticisms, or suggest needed modifications. The chairperson or spokesperson for the group that developed the bill responds to the questions, criticisms, or suggested modifications.

   e. When the discussion and debate are finished, legislators may move that (1) the bill be voted upon, in which case the motion is seconded and the legislators vote on the adoption of the bill, or (2) the session be adjourned to enable the groups to consider the bill that has been presented.

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*Time limits for the various steps in legislative debates should be established and understood as a part of the procedures.

f. If the session is adjourned, each group meets to decide on a course of action. A group may caucus to decide whether to support the bill that has been presented, suggest amendments to the bill, or bargain with the group that wrote the bill, in which case votes may be swapped for the amendments. The chairperson of each group may choose two representatives to carry out the bargaining, if this is the decision of the group.

g. If amendments are proposed, they are individually debated and voted upon.

h. If the first bill or the amended first bill is not passed by a majority vote, the second bill on the agenda is presented by the chairperson or spokesperson for that group. The second bill is considered following the procedures used to consider the first bill (items d through f above). If the second bill or an amended version of the second bill is not passed, the third bill is then presented, and so forth.

i. After all of the bills have been presented and if none has been passed, each group meets individually to decide on a course of action. A group may decide to attempt to gather support for its bill by (1) convincing individuals from another group to vote in behalf of its bill, (2) changing position and voting as a bloc or as individuals for one of the other bills, or (3) developing a compromise bill worked out with members of the other groups. During this period representatives from different groups may meet in an attempt to work out an agreement.

j. The chairperson of each group presents the amended bills to the presiding officer, who calls for a general session, and the debate procedure is repeated. This process is continued until (1) a bill is passed or (2) the time allotted for the session is up and the legislature is adjourned.

Town Meetings

A town meeting is designed to provide members of the community with an opportunity to participate in the decision-making process. This community forum usually considers local issues. A town meeting can serve as a local decision-making body performing functions similar to those of a representative city council or it can be advisory in nature, providing elected representatives with the views of citizens. Improvement associations in large metropolitan areas serve a similar purpose in that they provide information or direction to those who have responsibility for making decisions affecting the community and its citizens.

How to Proceed

1. Identify, or help students identify, a proposition of importance to the entire community that the town meeting will discuss, debate, and vote upon.

2. Organize the town meeting by assigning individuals the following roles:

   a. Chairperson.

   b. Representatives of a group in favor of the proposition.

   c. Representatives of a group in opposition to the proposition.

   d. Community members at large.

   e. Elected officials who represent the entire community in the town or city council, state legislature, or other legislative body.

3. Explain to students the purpose of the town meeting and the procedures to be followed.

4. Allow time for students to prepare for the town meeting in accordance with their assigned roles.

5. Conduct the town meeting, using the following procedures:

   a. The chairperson calls the meeting to order, explains the purpose of the meeting, and describes the rules to be followed during the meeting:

   --A person may not speak until he or she is recognized by the chairperson.

   --No one may interrupt when a person is speaking.

   --All remarks must relate to the proposition being discussed.

   --If the speaker wanders from the point, abuses other people, or in any way defeats the purpose of the meeting, the chairperson declares him or her out of order. If the speaker does not correct his or her behavior, he or she may be told to stop speaking or, as a last resort, be removed from the meeting.

   b. A representative of the group in favor of the proposition is asked to stand and describe the group's position. After the representative has finished speaking, he or she may ask people brought as witnesses to stand and speak.

   c. The chairperson announces that any person in favor of the proposition may stand and speak. They will be recognized in the order in which they stand.

   d. A representative of the group opposed to the proposition is asked to stand and describe the group's position. After the representative has finished speaking, he or she may ask people brought as witnesses to stand and speak.

   e. The chairperson announces that those people opposed to the proposition will be recognized in the order in which they stand and given an opportunity to speak.

   f. After all people on both sides of the proposition have had an opportunity to speak, the chairperson opens the question for additional discussion or debate. During this time any person may stand, be recognized, and present his or her point of view or argue against the point of view of someone else.

g. At the end of this discussion or debate the chairperson calls for a vote on the proposition. The vote is decided by a majority.

h. (Optional.) If the town meeting does not have decision-making powers, the elected official who represents the community may react to the discussion and decision of the town meeting.

Mediation Sessions

In a mediation session, an impartial person or agency helps settle controversies between opposing interests--for example, labor and management. Mediators meet with leaders from both sides and attempt to facilitate communication, promote understanding, and effect an agreement. The mediation agency has no authority to force agreements. The Federal Mediation and Conciliation Service is an example of an agency that fulfills the role described above.

How to Proceed

1. Identify, or help students identify, a controversy to be submitted to mediation.

2. Organize the mediation session by assigning individuals the following roles:

   a. Head mediator and two other mediators.

   b. Chairperson and members of one party to the conflict.

   c. Chairperson and members of the other party to the conflict.

3. Explain to students the purpose of the mediation session and the procedures to be followed.

4. Allow time for students to prepare for the session in accordance with their assigned roles.

5. Conduct the mediation session using the following procedures:

   a. Independent meetings of each party to the controversy are held in the following manner:

   --The head mediator assigns to each group a mediator who will meet with that group independently to ascertain the position of the group in regard to the issue under mediation. After the chairperson has explained the group's position, the mediator may ask the chairperson or other members of the group to express their opinions or clarify their positions.

   --The head mediator directs the mediators to exchange groups in order to enable each of the mediators to listen to the position of the group with which he or she has not met previously and to suggest changes in the positions of this group which might lead to agreement.

--After each group has had the opportunity to meet with both mediators and to determine the position of the opposition, each group meets independently again without the presence of a mediator. During this meeting each group considers the advice offered by the mediators in previous meetings and lists the group's position and reasoning in light of these considerations. When members of a group disagree on a point under consideration, the point may be decided by a majority vote. During this time the two groups may also communicate with each other by sending a representative to a mediator or to the other group.

b. Joint meetings of both parties to the controversy and mediators are held in the following manner:

--The head mediator calls for a joint meeting of both parties and the mediators. The head mediator chairs the joint meeting.

--The head mediator asks each chairperson to state the position and reasoning of his or her group in relation to a specific aspect of the conflict.

--If both parties present the same position in regard to the aspect of the conflict under consideration, the head mediator declares agreement and selects another aspect of the conflict to discuss. If the two parties do not agree, the head mediator may postpone discussion of the issue or may suggest that each group meet independently, with or without the assistance of mediators, to reconsider its position.

--If agreement is reached upon the various aspects of the conflict between the two parties, the mediation session will have been successful. If agreement is not reached and the two parties appear to have reached a stalemate, the head mediator can order the session adjourned.

Part 3: CONTENT AREAS

Introduction to Law

GUIDELINES FOR INTRODUCING THE STUDY OF LAW

It is not unusual for attorneys and other resource persons who agree to work with students and other groups to be asked to "just come in and talk about the law." We believe it makes more sense to structure a presentation than to go in and "open it up for questions." The latter approach is often fun for students, but it seldom produces real insights into the nature or function of law. It can also be painful to lawyers, because they are invariably asked to deal with such items as: (1) "My brother was stopped for speeding the other night and the cops frisked him. Is that legal?" and (2) "The coach made my buddy run four laps around the football field. Does he have the right to do that?"

This section contains several activities--some appropriate for adults and secondary-level students and some for younger children--which have been designed to introduce the *idea* of law or to dispel the notion that law is primarily punitive in nature.

A good activity for kicking off a unit or session on the law with high-school students or adults is a quiz called "How Well Do You Know the Law?" (Handout 38). After students have completed the quiz, tell them to save their worksheets and try the quiz again at the end of the unit to see what they have learned about the law. At that point you might distribute copies of the background reading material in Handout 39.

With younger students, you might want to start off with the activity called "When Is the Law Involved?" Of the remaining activities in this section, "Hillside School Rules" is appropriate for very young children, while "No Vehicles in the Park" might be used with groups of any age.

Handout 38

HOW WELL DO YOU KNOW THE LAW?
(A Quickie Quiz)

Directions: Write "yes" or "no" in answer to each of the following questions.

1. Can the record of your arrest and conviction as a teenager later prevent you from holding public office? ______
2. Can you wear your hair as you please in school? ______
3. Is hitchhiking a crime? ______
4. Do you have a legal right to an allowance for helping at home? ______
5. Is it a crime to write on restroom walls? ______
6. Is the victim of a murder called the *corpus delicti?* ______
7. Can a girl sue a boy for false remarks about her character? ______
8. Can you be found guilty of negligence in an accident for not tightening your seat belt? ______
9. Is it a crime to plan a robbery, if you never carry it out? ______
10. Can you be arrested for carrying a razor blade in your pocket? ______
11. Is it legal to "go limp" when arrested? ______
12. Can you legally punch someone for making remarks about your girl? ______
13. Can you be arrested for refusing to help a policeman? ______
14. Are your parents responsible for any damage you cause? ______
15. Is "crashing a party" legal, if you do not create a disturbance? ______
16. Can the buyer of your used motorbike sue you for lying about its mileage? ______
17. Is it a crime to detain a date in your car against her will? ______
18. Have you committed a crime if you merely *threaten* to slap someone? ______
19. If you stand on your own property and throw stones across the property of another person, are you trespassing? ______

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20. Can you alone arrest a person committing a crime? ______

21. Is consent of a 15-year-old girl a defense against rape? ______

22. Is it a crime to "borrow" a bike, if you return it before the owner is even aware that it is missing? ______

23. Do the earnings of a teenager living with his parents belong to him? ______

24. Does a teacher have the legal right to "lay a hand" on a pupil? ______

25. Are finders of valuables obliged to try to locate the owner? ______

26. Can a lawyer refuse to put a defendant on the witness stand? ______

27. Is hazing of fellow students legal? ______

28. Is civil disobedience different from violating criminal laws? ______

29. Is there a constitutional right to be a conscientious objector? ______

30. Can a person who burns his draft card be fined and imprisoned? ______

Handout 39

WHAT IS LAW?

The Function of Law

Suppose one person were shipwrecked alone on an uninhabited island far from shipping lanes and air routes, where there was little chance of ever being discovered. Law would be useless there, because the law as we know it implies rules and regulations for governing people in their relationships with others. Since the person would be alone on the island, there really would be nothing to regulate.

But suppose an entire boatload of people is shipwrecked. At that point some rules must be established in order for all the people to live together on the same island. As more and more people have more and more relationships with one another, more rules and regulations must be established in order that the people may live in harmony with one another.

Not all rules governing human relationships are what we commonly call laws (those rules and regulations governing conduct which are passed by the government). Customs, religious doctrines, and folkways have a great influence on people's relations with one another. For example, in certain areas of the Middle East it is quite proper to belch loudly after a meal as a gesture of thanks to the host for a good meal. In America, the same act would be an incredible display of poor manners. Some of these rules become so strong in society that they are ultimately expressed in the form of a law. Laws forbidding certain sexual activity, such as adultery or homosexual conduct, have deep roots in religious doctrines.

The main concern here, however, is law as it is established by the government. These laws have the power of the government behind them to make sure the laws are followed. If they are not followed, the government has the power to enforce them.

The basic function of law, then, is to provide rules governing people in their relationships with others so that all may live in maximum harmony. Every law restricts a person's freedom to some extent, but these restrictions are usually necessary so that all may have greater freedom.

Kinds of Law

Laws are divided into two main groups--civil and criminal. Most people think in terms of criminal law when they think of law--how bad was the crime? How much jail time did the defendant (the person charged with a crime) get?

It is important to realize, however, that laws regulate just about everything we do, and that criminal law is only a small part of the

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entire system of laws. For example, laws are enacted to make sure the restaurants we eat in are clean and serve wholesome food; to enable people to buy and sell houses and cars to one another with confidence; to provide for public education; to set speed limits on roadways; and to make sure the toys, clothing, and appliances we buy are safe to use. There is hardly an area of economic or social interaction that is not affected by the law.

Criminal laws involve people who have been charged with crimes. They define crimes, set forth the defendant's rights, and give the penalties for the crimes. Civil laws involve disputes between two or more people and usually require the wrongdoing person to pay money or do a specific act. Under civil law, a restaurant owner who served rotten food which made the customer sick may have to pay the customer's medical bills and possibly other expenses related to the illness.

Sources of Law

Divine and Natural

Over the ages, beliefs as to the sources of law have changed. Early in human history, laws were thought to be sent from God and were usually announced by some religious official. These were known as Divine Laws and were often asserted by kings, who said they had a God-given right to make laws.

Natural laws later became an important source of law. These were rules considered so basic to human nature that no society could exist without them. The murder of another person would be contrary to natural law. Many natural laws have been more formally expressed by written statutes.

Constitutions

The United States (federal government), in addition to each state within the United States, has a constitution which sets out broad principles of law that must be obeyed by all those living under it, including the government itself. For example, both the U.S. Constitution and the Florida Constitution guarantee religious freedom and prohibit the government from establishing any religion.

These constitutions may be amended (changed) only through a time-consuming process that requires the consent of a large portion of the people. Constitutions are intended to give stability to government so that rules and forms of government may not be changed quickly during brief political, social or economic upheavals.

Statutes

Statutes are laws passed by the legislative branches of government (Congress in the federal government or state legislatures in each state) which set out in more detail the relationships between people or between the government and the people. They may be added, repealed, or changed much more easily than constitutions, and therefore are more easily adjusted to changing circumstances. Realizing the recent rise in popularity of smoking marijuana, many people might guess that the law prohibiting its possession or sale in Florida is a recent law. In truth, the possession or sale of marijuana has been against the law in Florida since 1937.

Often a number of laws dealing with the same subject matter are put together in what are known as codes. For instance, the system of statutes dealing with business transactions is known as the Uniform Commercial Code; it has been adopted as law in Florida as well as all of the other states except Louisiana. Other examples are the Uniform Probate Code, dealing with estates, and the Model Corporation Act, dealing with corporations. There is a nationwide trend to make state laws as similar as possible to the laws of other states in order to promote interstate trade and commerce. With greater legal uniformity from state to state, it becomes easier for people in one state to deal with people in other states.

Common Law and Case Law

When our governments were established, our founding fathers were familiar with the English system of law, known as the common law. Common law is a system of rules built up over the years by the decisions of judges in cases decided by them. Since thousands of cases each year are decided by judges, each one of those decisions establishes a certain legal rule, known as case law.

A case is a judicial proceeding; it may be civil or criminal. The record of what happens in these cases is kept and is often published, especially if the case is decided by an appeals court. These published cases are especially important to lawyers and judges, who may read them to find a case similar to one which may currently be in dispute. The published cases are also used by lawyers to keep up with changes in the law so that they can better advise clients of their legal rights and responsibilities.

Each case published will give a brief statement of the facts, the issues involved, and the judge's decision. This decision, the case law, adds to the common law.

Often, in deciding a case, a judge will look for a similar case already decided and use the prior decision as a guide in deciding the present case. It is the lawyer's duty to find those previous cases for the judge which the lawyer believes should be used in deciding the present case. These prior similar cases are known as *precedent,* and they should be used by the judge in deciding the case. For example, in a divorce case, a judge may have decided that a child of tender years should live with the mother if both parents are fit and proper. If the issue in the present case is the custody of a child of tender years where both parents are fit and proper, the judge will have the benefit of the prior case to help him in his decision.

The application of prior case law to a similar case is known as *stare decisis* (star-ee de-sy-sis), a Latin phrase meaning to stand by something already decided.

This type of law is very flexible because most cases differ at least slightly from other cases. Therefore, if the judge saw fit, he could vary the prior rule to fit the present case. This decision, then, would create a new rule to be used in later similar cases.

Sometimes prior case law becomes totally unacceptable to society, and judges will completely depart from the case law by "over-ruling" the prior case. For example, at one point in time it was legal in the United States to have "separate but equal" educational facilities for black and white students. In 1954, the U.S. Supreme Court took the opposite position by declaring separate but equal facilities unconstitutional in the landmark case of *Brown v. Board of Education*.

Ordinances

Smaller government units than the state--counties, cities, towns, or villages--have the power to enact laws affecting their local area. These laws, known as ordinances, usually apply to such strictly local situations as zoning or bicycle registration.

Administrative Regulations

Agencies are established by state and some local governments to deal with problems that cannot be efficiently handled by the state legislatures because they require technical expertise and detailed regulation. Examples of these agencies in Florida are the Department of Transportation, the Department of Education, the Real Estate Commission and the Bureau of Blind Services.

In order to function properly, these agencies have rules and regulations that govern their own operations. These rules and regulations have the full force of law so long as they do not exceed the powers given to the agency by the statutes creating the agency. For example, the Department of Education has the power to certify teachers to teach in Florida's public schools. Under such power, the department has established rules and regulations outlining the educational requirements that must be met in order to be certified to teach certain subjects. These rules and regulations have the same effect as statutes, and the Department of Education has the power to enforce them.

Power of Laws

The U.S. Constitution is superior to all other law. Therefore, any law contrary to the Constitution is null and void, or unconstitutional.

The next most powerful laws are federal statutes passed by Congress, provided the federal laws deal with powers reserved to the federal government, such as raising armies. State laws pertaining to raising armies would be null and void, since only the federal government has the power to pass laws on that subject. Federal common law would be third, provided it deals with federal problems.

At the state level, the U.S. Constitution is still supreme, followed by the state constitution, state statutes, and state common law.

WHEN IS THE LAW INVOLVED?

This activity is designed to show upper-elementary and junior-high students the extent to which the law affects their lives. To conduct the activity, read either (or both) of the two stories aloud and ask students to raise their hands at every point when they think the law is involved. Then ask students to describe how the law is involved in that part of the story. (The answers are provided below each story for your convenience.)

* * * * * * * * * * * * *

Story I

David Bradley (1) is 15 years old (2). He enjoys nothing more than riding his bike (3) and allowing his dog (4) to follow along. Thursday he started through the park (5) and met a man who was selling (6) chances (7) to win thousands of dollars in a state lottery (8). David bought a 25 cent ticket (9) and it turned out to be the big winner. He then bought a car (10) and took his dog for a ride (11).

(1) legal name
(2) birth certification
(3) bike and traffic laws
(4) leash laws
(5) public places
(6) vending laws
(7) gambling laws
(8) gambling laws
(9) monetary laws
(10) laws governing motor vehicles and juveniles
(11) laws governing operation of motor vehicles

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Story II

After I got up this morning, I decided what to wear (1) while I brushed my teeth with the newest toothpaste (2). While drinking my orange juice (3) and coffee (4), I listened to the radio (5) and let my dogs out for their morning run (6). When the mail arrived (7), I found a number of bills and circulars advertising property for sale (8). Included was a stamp with my name asking for a contribution of $2.00 (9). When I washed the dishes, the water (10) did not have sufficient pressure so I telephoned (11)

(1) laws against nudity
(2) PFDA
(3) PFDA
(4) import controls
(5) federal licensing
(6) local licensing and fencing laws
(7) federal laws
(8) contract law, truth in lending, fraudulent use of the mails
(9) law on unsolicited merchandise
(10) municipal services law
(11) regulation of public utilities

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INTERPRETING THE LAW

"Interpreting the Law" is an effective activity for helping upper-elementary and junior-high students understand the functions of laws and the role of a judge. Two variations are presented here; if you want to use the activity for older students and adults, you might want to rewrite the situations to make them more interesting and relevant to those age groups.

* * * * * * * * * * *

Variation 1

Background Information

A basic value in American society is individual safety. Many rules and regulations arise because Americans believe that people in their everyday lives should feel they are reasonably safe from bodily injury. The following simulation is concerned with a statute that evolved because of people's concern for safety in a specific environment. The statute regulates behavior.

Purpose

The purpose of this activity is to have students participate in the adjudication of several cases alleged to be in violation of a statute. Every participant plays the role of a judge. Individual cases are presented, and judges are asked to rule upon each one before determining whether a statute called "No Vehicles in the Park" has been violated. Violation of the statute carries a minimum fine of five dollars and a maximum fine of fifty dollars.

Procedure

Announce to the class that every pupil in the room is a judge. Explain that there is a neighboring community where no vehicles are allowed in the park. You are going to present a series of cases that may be violations of that statute. Various judges will be called upon to determine if a case is, in fact, a violation. Each judge will have to make a determination, based solely on the facts presented. Be sure to identify each student as "Judge Smith" or "Judge Jones," in order to emphasize their roles.

Reprinted with permission from *The Methods Book: Strategies for Law-Focused Education*, by Arlene F. Gallagher (Chicago: Law in American Society Foundation, 1978), pp. 48-51.

Case 1

An automobile drives through the park. It is stopped by a police officer. After checking license and registration, the officer asks the driver why she is driving through the park and if she knows about the statute prohibiting vehicles. The driver says she knew about the statute, but she was in a hurry to cross town and went through the park as a shortcut.

Call upon a judge to adjudicate the case. Remind the students that the verdict can range from not guilty to a fine on a scale from five to fifty dollars.

Case 2

A garbage truck is stopped by a police officer for driving through the park. The driver states that he knows about the law, that usually he does not drive into the park to pick up refuse. On this day, there was an unusual amount of garbage, and he couldn't carry it all by hand.

Call upon another judge.

Case 3

An ambulance is stopped by a police officer for driving through the park. The ambulance did not have its siren operating or its lights flashing. The driver explains that an accident had occurred, and the ambulance was called to pick up an old person. The person is believed to have had a heart attack. It would be unsafe to use the siren or lights with a heart-attack victim.

Call upon another judge.

Case 4

A group of bicycle riders from the Fresh-Air-Is-Fun Club are stopped by a police officer while cycling through the park. The cyclists say they are on a day-long bicycle outing from another town and are unfamiliar with the statute. Several members of the group argue with the officer, stating that the law is stupid because the paths are wide enough for riders and walkers.

Call upon another judge.

Case 5

This case involves a six-year-old girl who is riding her tricycle through the park. An officer stops her and tells her she can't ride her tricycle in the park. The little girl continues to ride, after telling the officer that it's a silly rule and she doesn't care.

Call upon another judge. (You might wish to mention to the class that this is a hypothetical simulation and that ordinarily a six-year-old child would not be brought to court.)

Case 6

An eighty-two-year-old woman is stopped by a police officer when she is seen riding through the park on her skateboard. The woman has remarkably acute vision and says she read the posted sign prohibiting vehicles, but claims that her skateboard is a toy, not a vehicle. The officer does not know whether a skateboard is a vehicle or not. The woman is brought to court so that a judge can render a decision.

Call upon another judge.

Case 7

A group of citizens in the community decides to place an old World War II army tank on a pedestal in the middle of the park. The tank will be transported on a flatbed truck. Before doing so, a representative of the group calls the police department to ask if this is a violation of the statute about vehicles.

Call upon a judge to render an opinion.

Follow-up Discussion

By the time you have gone through all the cases, the class should be asking questions about what the statute means and how a vehicle is defined. If not, you can add your own cases, including roller skates, wagons, wheelchairs, and other such things.

Conduct a discussion, using the following questions:

1. Why would a community want a law about vehicles in a park?
2. What is the purpose of a park, and how does the statute protect that purpose?
3. Is the purpose of the park related to the purpose of the statute?
4. If you were legislators rather than judges, would you want to change this statute?

Our legal system requires that a delicate balance be maintained among competing interests. In the functioning of government, the purposes of various institutions must be in balance with one another. It is important for students to see the relationships between the legislature, the judiciary, the executive, law enforcement, and the corrections branches. The following questions are designed to focus on these relationships:

1. What is the purpose of each institution?
2. Why are the processes separate? Why shouldn't the lawmakers also be the law enforcers, for example?
3. It would certainly make life easier for police officers if they could issue appropriate punishment on the spot. What would be the dangers in operating this way?
4. What is society valuing by separating lawmaking from law enforcement?

Variation 2

Procedures:

1. Read or ask students to read Handout 40.

2. Tell students to decide individually which exceptions they would grant, and why.

3. Divide the class into groups of four or five. Ask each group to decide on exceptions.

4. Vote on each case; for those the majority agree upon, have the class rewrite the law, so that all the exceptions they desire are included.

5. Debrief the lesson: discuss interpretation and the need for clear laws.

Adapted by Lannette Baker Sullivan from an idea developed by Lee Taylor. Reprinted with permission from *Vermont Legal Education Guide* (Montpelier: Vermont State Department of Education, 1976), pp. 88-89.

Handout 40

NO VEHICLES IN THE PARK

The town of Beautifica has established a lovely park in the city because the city council wished to preserve some elements of nature, undisturbed by city noise, traffic, pollution, and crowding. It is a place where citizens can go and find grass, trees, flowers, and quiet. In addition, there are playgrounds and picnic areas. At all entrances to the park the following sign has been posted: "No Vehicles in the Park."

The law seems clear, but some disputes have arisen over the *interpretation* of the law. Interpret the law in each of the following cases, keeping in mind the *letter* of the law as well as the *intent* of the law.

1. John Smith lives on one side of the town and works on the other side. He will save ten minutes if he drives through the park.

2. There are many trash barrels in the park, so that people may deposit all litter there, thereby keeping the park clean. The sanitation department wants to go in to collect the trash.

3. Two police cars are chasing a suspected bank robber. If one cuts through the park, he can get in front of the suspect's car and trap him between the patrol cars.

4. An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.

5. Some of the children who visit the park want to ride their bicycles there.

6. Mrs. Thomas wants to take her baby to the park in his baby buggy.

7. A monument to the town's citizens who died in the Vietnam War is being constructed. A tank, donated by the government, is to be placed beside the monument.

8. Several of the town's citizens have made a living for several years by driving people around scenic spots in the city in an old-fashioned horse and buggy. They want to drive people through the park.

HILLSIDE SCHOOL RULES

The way in which a law is likely to be interpreted depends in large part on its intent. This activity can be used to help young elementary students develop an understanding of the relationship between the intent of a law and the letter of the law.

Post the "school rules" below on the chalkboard and read each of the six situations below, allowing plenty of time for the class to discuss what punishment, if any, would be appropriate in each case. Then ask students to hypothesize about the reasons for each of the rules.

* * * * * * * * * * * * *

This year Hillside School's Student Council established the following set of rules. The rules also received approval from the faculty and school administration.

1. No smoking by students is permitted on school grounds.
2. The playground should be kept clean and free from litter.
3. No cheating on tests and other school assignments is allowed.
4. No fighting is permitted on school grounds.
5. Coats or jackets must be worn on the playground if the temperature is under 65°.
6. No loud talking or yelling in the halls while classes are in session.
7. No snow ball throwing.
8. All children must cross streets before and after school under the direction of a member of the Safety Patrol.

What Should Happen to These Children?

1. John, a fourth grader, is caught looking directly at Marvin's paper during a math test. All of John's answers match Marvin's, even the incorrect ones.

Reprinted with permission from *The Role of Law in Society and the Rights and Responsibilities of Citizenship: A Curriculum Guide for Kindergarten Through Grade 12* (Jefferson City, Mo.: Missouri Bar Association and Missouri Department of Elementary and Secondary Education, 1976), pp. c125-26.

2. Mary Beth, a sixth grader, is found smoking a cigarette in the girl's bathroom.

3. Eloise, a first grader, begins to dart across Maple Street on her way to school. The Patrol Girl, who was talking with a friend, notices Eloise just in time to grab her before a car speeds through the intersection.

4. Jay, Nina, and Carlos were having a wonderful time building a snow castle on the playground. Nina throws a snowball at Carlos. He laughs and throws one back. They continue their work on the castle.

5. Theresa was very happy. She was coming to school late because she had had a dental check up that day. And she had had no cavities! She hurried into the school building. She was loudly singing the theme song from "Zoom".

6. Matthew was noticed on the playground by a teacher. He was dropping a candy bar wrapper on the ground.

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Individual Rights

GUIDELINES FOR TEACHING ABOUT INDIVIDUAL RIGHTS

Because issues involving individual rights are generally of high interest to students and other groups, resource persons are often asked to talk to school classes about such issues. The activities and resources in this section are classified according to three subcategories: freedom of speech, freedom of the press, and search and seizure.

Freedom of Speech

Two landmark cases, *Tinker v. Des Moines* and *Feiner v. New York,* provide material for the activities in the first subcategory, freedom of speech. In addition to detailed instructions for using both *Tinker* and *Feiner* with secondary students and adults, the section includes an activity for using *Feiner* with elementary students. (An activity for younger students based on *Tinker* can be found on page 43 in the section devoted to case studies.) Note that Handout 41, a student reading, "gives away" the decisions in both *Tinker* and *Feiner* and thus should not be distributed until after the activities based on those cases have been completed.

Freedom of the Press

Freedom of the press is a subject in which most students readily develop a high level of interest and involvement, particularly when the learning activities are relevant to their own lives. Handout 44, which contains a brief introduction and an opinion survey, is a good starting point for secondary students. Both "Free Press in School" and "To Speak or Not to Speak?" are effective teacher-led activities for junior and senior high school students.

"Jonathan's Essay" is designed to introduce elementary students to the concept of freedom of the press. "Twice the Price" (Handout 45) presents a case study and role descriptions that can be used in elementary classes to conduct a mock trial based on a situation parallel to the Zenger case. (See pages 47-49 for suggestions on conducting a mock trial.) The third freedom-of-the-press activity for elementary students, "The Trial of John Peter Zenger" (Handout 46), can also be presented in a mock-trial format.

Search and Seizure

The topic of search and seizure and the Fourth Amendment to the U.S. Constitution may be approached in different ways by different resource persons. A lawyer might choose to engage students in a discussion of the evolution of prohibitions against illegal search and seizure, culminating in a mock trial or moot-court activity. A police officer might wish to focus on the difficulties involved in conducting a legal search of a suspect's house or property, and conclude the activity with an examination of the conflict between a suspect's civil rights and the pursuit of law and order. Most of the activities in this subsection approach the topic from the perspective of a police officer.

The resource person may want to introduce the topic by passing out copies of Handout 47, which contains general background and informational material in addition to case studies illustrating applications of the guidelines. The guidelines will help students grasp the limitations on the issuance of a search warrant and enable them to deal more easily with the cases. Each case can become the focus for a discussion by the entire class, or smaller groups of five or six students can decide how to resolve each problem and then appoint a spokesperson to report its decisions to the class.

A sample search warrant (Handout 48) can be used to stimulate a class discussion about the implications of the Fourth Amendment. Another activity for secondary students and adults uses case studies to emphasize the point that there are many kinds of situations in which a police officer can legally conduct a "search" without a warrant.

The activity in Handout 49 should be of particular interest to high-school students because it deals with the subject of searches of student belongings in school. In using this activity, the resource person may want to talk about potential conflicts between school rules and constitutional rights.

The final activity in this section, "Conflicting Rights," was designed to be used in introducing elementary students to the topic of search and seizure. Another search-and-seizure activity for elementary students, included in the "Strategies" subsection on mock trials, is based on Handout 12, "Francine and Kerplunk."

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Handout 41

INDIVIDUAL RIGHTS LAW

A. INTRODUCTION

The Constitution of the United States not only sets up our basic system of government with the President, Congress and Supreme Court, but also guarantees each American citizen certain basic rights. The most important of these rights are found in the first ten amendments, known as the Bill of Rights, and the Fourteenth Amendment to the Constitution.

Before beginning to study this area of law, it is important to keep in mind three basic ideas. First of all, even these fundamental rights are not, and cannot be, absolute. As we shall see, the totally free exercise of certain rights would in some instances restrict the rights of others. The job of the courts is often to balance one right against another. For example, if a teenager as a joke yells "fire" in a crowded movie theatre, would the First Amendment's right of freedom of speech protect him against arrest? The answer is "no" because the yelling of "fire" in this situation created a danger to the people in the theatre which a court would see as more important than protecting the teenager's right to free speech in this instance.

Second, in reading the Constitution you will see that the amendments usually restrict "Congress" or "The State" by saying that they cannot pass a law that takes away basic rights. Thus in some cases a private individual citizen may be able to take away another's rights unless he is representing the government in some capacity (*e. g.*, he is a police officer).

Just because the Constitution does not always restrict private individuals, however, does not mean Congress or a state legislature cannot pass laws protecting individuals against others. This has been done in some instances (for example, the 1968 Civil Rights Act forbidding individuals from discriminating in the sale or renting of homes and state laws against such discrimination).

Third, always remember that enforcing certain rights can be expensive and time consuming. Before deciding whether or not to try to enforce a right, a person should consider the money and time involved.

Reprinted with permission from *Street Law: A Course in Practical Law*, by the National Street Law Institute (Mineola, N.Y.: West Publishing Co., 1975), pp. 195-201.

B. THE FIRST AMENDMENT

Amendment 1 (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble and to petition the government for redress of grievances.

1. FREEDOM OF SPEECH

a) Speech in general

This can be defined as the communication of thoughts and ideas. It could also be described as the citizen's right to listen freely or be exposed to different points of view.

Speech does not just consist of verbal communication. Ideas may also be communicated by conduct. That is, sometimes a person's actions may represent a thought or idea, even though he or she did not say one word aloud. For example, a person who disagreed with a recent decision of the U. S. Supreme Court might rip up a copy of that court decision in public. This type of action is sometimes referred to as *symbolic speech*.

As we saw in the example where the teenager yelled "fire" in a theatre, freedom of speech is by no means absolute. In trying to decide when free speech should be protected under the First Amendment, the U. S. Supreme Court has used a number of different tests. One of the oldest tests used is called the *clear and present danger* test in which the court looks at the circumstances under which the words were used and decides whether in that particular situation the speech would create a "clear and present danger" of causing someone or society to be hurt. In applying this test to the above example of ripping up a court decision in public, a court might examine what dangers were likely to result from such an action. In this situation, it is likely that the court would find that the symbolic speech would not be dangerous to anyone.

Another test in free speech cases is the *balancing test* in which the court looks at the circumstances involved and attempts to balance the interests of society against the interests of the individual in expressing his ideas. In applying this test to the above example of ripping up a copy of a court decision, the court might balance the interest of society in peace and good order and respect for law against an individual's right to express his beliefs about a particular court case.

The U. S. Supreme Court has said that certain types of speech will not be protected by the First Amendment. For example, a person's speech may not be expressed in a manner which will incite others to riot or violence. The speech cannot be obscene, nor can it be "abusive, threatening" or what the court has called "fighting words". (These are words which will likely cause the person to whom they are ad-dressed to desire to fight the speaker). In addition, the spe[illegible] cannot be slanderous (speaking false statements about someone which damages his reputation).

THE CASE OF FEINER v. NEW YORK

In Syracuse, New York, a student named Irving Feiner climbed up on a soap box on the sidewalk of a public street and with the use of a loudspeaker attached to a car began to address a group of citizens. The police were called at 6:30 P.M. When they arrived, they concentrated on controlling the crowd (which numbered 75 to 80 people and was composed of both black and white persons) which had gathered on the streets. The police noticed that statements by Feiner were "stirring up a little excitement". One person in the crowd threatened to stop Feiner, if the police would not. There were others who were in support of Feiner's remarks. Feiner gave the impression in the speech that he was trying to arouse the black people against whites, urging them to rise up and fight fo[illegible]ir rights. The police warned Feiner to stop. After he refused, they arrested him.

In court, Feiner claimed he had a right to free speech but he was still convicted of disorderly conduct. He appealed to the U. S. Supreme Court.

b) Speech in Special Places

The place where a speech is given may make a difference in whether a court determines it to be protected by the First Amendment. For example, in the *Feiner* case, the court noted that it was important that the speech took place on a crowded street in the early evening.

The courts have also ruled that though the First Amendment applies in places such as schools and prisons, the particular conditions in these places make it necessary to have special rules regarding free speech. The leading case in the area of free speech in schools is:

THE CASE OF TINKER v. DES MOINES SCHOOL DISTRICT

Betty Tinker and her brother wanted to express their opposition to the Vietnam War. They decided to wear black armbands to school in order to symbolize their objections to the war and their support for a truce. Upon learning of this plan, the principals of the city schools met and adopted a policy that anyone wearing armbands would be asked to remove them. If they refused, they would be suspended until they returned without the armbands. Betty, her brother and another student wore black armbands to their schools. Though some students argued over the Vietnam issue in the halls, there was no violence. All three were suspended from school until they came back without their armbands.

The U. S. Supreme Court held that the Tinker children's actions were symbolic speech protected by the First Amendment. The key fact in this determination was that the wearing of armbands did not result in a "substantial disruption" of the educational process. The Supreme Court, therefore, established the test of whether the particular speech brought about a disruption of school. This test has been used by courts in many other school cases.

In regard to prison freedom of speech cases, the courts have been willing to allow even greater restriction of a prisoner's First Amendment rights. The need to maintain security and safety in a prison has been given as the main reason for limiting a prisoner's rights.

FREEDOM OF SPEECH: *TINKER v. DES MOINES*

This activity represents a case argued, in 1969, before the U.S. Supreme Court. It is included here because it allows students to explore in some depth the mechanism of appeal, the relationship of personal beliefs and values to law, and the extent and limits of First Amendment freedoms. Enough material is available so that a resource person might wish to deal with Tinker as a mock trial. Role cards for witnesses who appeared in district court, for example, are included.

Note: If the simulation activity outlined on the following pages is used in class, it should precede any discussion of the actual Supreme Court opinion (see Handout 41).

* * * * * * * * * * * *

In Des Moines, Iowa, three students--Christopher Eckhardt, 16; John Tinker, 16; and his sister Mary Elizabeth (Betty), 13--decided in December 1965, along with their parents and some friends, to wear black armbands all through the holiday season to protest the war in Vietnam and express their public support for a cease-fire. Their school principals, having heard of their plans, made a rule on December 14 which said that any student wearing an armband would be asked to take it off, and if he or she refused this order, suspension from school would result until the student came back without the armband. The students knew of the rule. Nevertheless, Christopher and Betty wore their armbands on December 16, and John wore his the following day. All three were suspended and sent home and did not choose to return to school until after New Year's Day--the length of time of their original plan.

The students took their case to court, and the district court upheld the position of the school authorities on the grounds that the armbands might have tended to "create a disturbance" in the school. But students in the school had been permitted to wear ordinary political buttons and even an Iron Cross (a traditional emblem of Nazism), so the Tinkers' lawyers argued that the school was restricting the free expression of a particular point of view--i.e., opposition to the Vietnam War.

The Supreme Court agreed to hear the case on final appeal.

Tinker v. Des Moines Mock Trial

This simulation was designed to acquaint student with the functioning of the federal court system and to let them experience firsthand involvement with the issues of symbolic expression dealt with in the Tinker case.

Adapted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 35-52. The mock-trial activity was developed by Edward T. Munley.

Assignment 1: Designation of Roles

After reading aloud the background on the Tinker case, assign students to the following roles:

One or two lawyers for the Tinkers
One or two lawyers for the school board
John F. Tinker
Christopher Eckhardt
Mary Elizabeth Tinker
Dennis Pointer
Aaron McBride
Andrew Burgess
Leonard Carr
Leonard Tinker
Court officer
Chief Justice Earl Warren
Justice Hugo Black
Justice William O. Douglas
Justice John M. Harlan
Justice William Brennan
Justice Potter Stewart
Justice Byron White
Justice Abe Fortas
Justice Thurgood Marshall

The resource person should assume the role of District Court Judge Stephenson.

Roles should be assigned to students one week in advance of the beginning of the simulation. Allow sufficient time for them to research their roles and at least one day of small-group discussions to alleviate any problems. Handout 42 can be duplicated and cut apart so that role cards can be distributed to all participants.

Assignment 2: Conferences

The "lawyers," during the first two days, and the "justices," thereafter, have the most difficult roles. It will be beneficial if time can be allotted to review with these individuals their perceptions of the ways they should portray their roles.

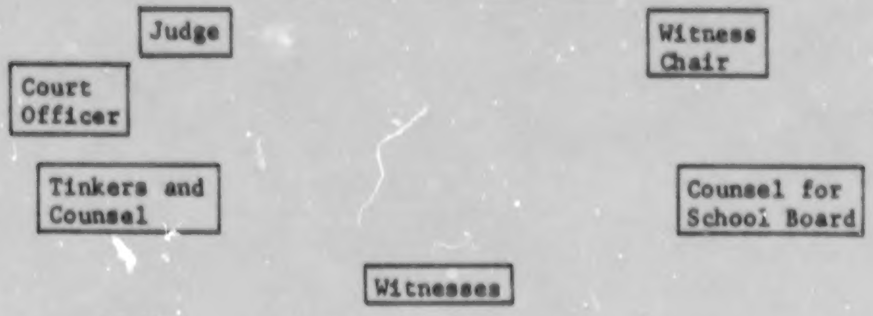
The students who will be "witnesses" should meet with their respective "lawyers" to discuss what information each will contribute at the hearing.

Assignment 3: Evidentiary Hearing in District Court

The "lawyers'" instructions contain all the information necessary for the trial.

The resource person should allow the lawyers representing the Tinkers to present their witnesses first. The lawyers for the school board may then cross-examine the Tinker witnesses. The attorneys for the school board may then call their witnesses. The Tinker lawyers may, of course, cross-examine any witnesses presented by the school board.

Layout for District Court


Judge
Witness Chair
Court Officer
Tinkers and Counsel
Counsel for School Board
Witnesses

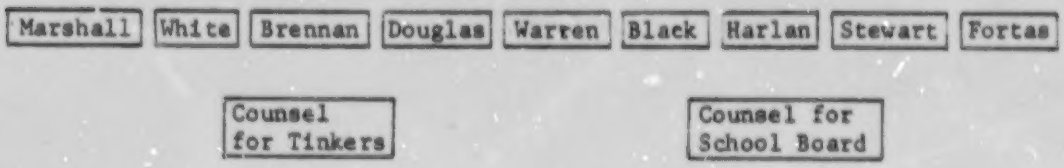
Assignment 4: Oral Argument Before the Supreme Court

Before the Supreme Court, the lawyers may present no witnesses but must present concise legal arguments based upon the facts of the case (although the official "facts" are determined by the trial court), the available legal precedent, and the lawyers' knowledge of what might appeal to at least five justices.

The objective before the Supreme Court is to build a minimum winning coalition of five justices.

During the oral argument, either the chief justice or any of the associate justices may, at any time, interrupt the lawyers for the purpose of clarification of any point being offered.

Layout for Oral Argument


Marshall
White
Brennan
Douglas
Warren
Black
Harlan
Stewart
Fortas
Counsel for Tinkers
Counsel for School Board

Assignment 5: "In Camera" or Conference Session of the Supreme Court

In the conference session, each justice first gives his opinions about (1) the relevant facts of the case, (2) the issues involved in the case, (3) how the conflict should be resolved (should the injunction be granted), and (4) the reasoning that should be contained in the opinion.

The justices give their views of the case by order of seniority (the chief justice is always considered the most senior justice). The order of seniority in this case is as follows:

1. Chief Justice Earl Warren
2. Justice Hugo Black (1937)
3. Justice William O. Douglas (1939)
4. Justice John M. Harlan (1955)

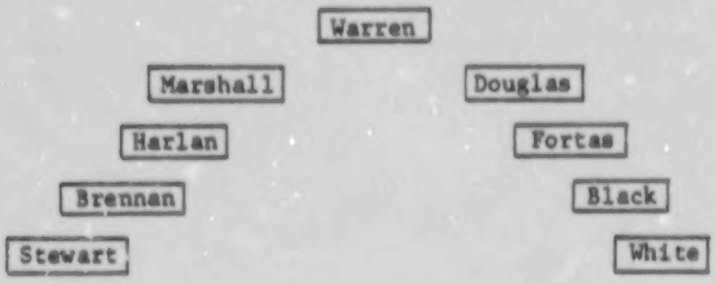
5. Justice William J. Brennan, Jr. (1956)
6. Justice Potter Stewart (1958)
7. Justice Byron R. White (1962)
8. Justice Abe Fortas (1965)
9. Justice Thurgood Marshall (1967)

After the justices give their interpretations of the way in which the case should be decided, the chief justice decides the issues which will be voted upon. Such votes might be taken, for example, as:

1. Should the injunction be granted?
2. Should the case be decided on First Amendment grounds?
3. Should the case be decided on grounds of reasonableness?
4. Should a "test" for this type of situation be constructed?

When voting, the justices vote by reverse seniority, from the most junior justice to the chief justice.

Layout for "In Camera" Session



Excerpts from the Decision of the Supreme Court in *Tinker v. Des Moines*

Note: These opinions should not be referred to or distributed to the students until after the simulated Supreme Court trial has been conducted and those playing the parts of the Supreme Court justices have rendered their opinions. As part of the "debriefing," the opinions quoted below can be introduced to further clarify the issues involved in the case.

From the Majority Opinion

Noting that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Court, through Fortas, reversed the lower-court decision, adding:

> The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment. . . .
>
> It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

In our system, undifferentiated fear or apprehension of disturbance [the district court's basis for sustaining the school authorities' action] is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any words spoken, in class, in the lunchroom or on the campus, that deviate from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk. . . .

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol--black armbands worn to exhibit opposition to this nation's involvement in Vietnam--was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible.

> If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school.
>
> In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guaranties.

Justices Stewart and White submitted brief concurrences.

From the Dissenting Opinions

In the course of a lengthy dissent, in which he scored the "myth" that "any person has a Constitutional right to say what he pleases, where he pleases, and when he pleases," Justice Black observed: "While the absence of obscene or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually 'disrupt' the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw it would; that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam War." He continued:

> Even if the record were silent as to protests against the Vietnam War distracting students from their assigned classwork, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam War have disrupted and divided this country as few other issues ever have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

In a separate dissent, Justice Harlan maintained that "school officials should be accorded the widest authority in maintaining discipline and good order in their institutions" and thus "would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns--for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion." In the Tinker case, he found "nothing which impugns the good faith of respondents in promulgating the armband regulation."

Questions for Further Consideration

1. What if many students, rather than only a handful, had made hostile comments to the students wearing armbands?

2. What if the wearing of armbands had led to violence on school grounds?

3. Should either of the above situations have had any bearing on the Court's decision?

Handout 42

ROLE CARDS FOR TINKER CASE

Role 1: Lawyer for Tinkers--Dan Johnson

This role may be shared by more than one participant.

Your purpose is to convince the district court judge that he should grant an injunction, under 42 U.S.C. of 1983, that will restrain the authorities of the Des Moines Independent Community School District from disciplining your clients.

During the evidentiary hearing (similar to a trial court proceeding), you must not only cite the relevant law but also establish "the facts" of the case.

In citing the law, the following cases may be helpful: *Gitlow v. New York,* 268 U.S. 652, 69 L. Ed. 1138, 45 S. Ct. 625 (1925), wherein it was determined by the Supreme Court that an individual's right of free speech is protected against state infringement by the due process clause of the Fourteenth Amendment; *West Virginia State Board of Education v. Burnette,* 319 U.S. 624, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943); and *Stromberg v. People of State of California,* 283 U.S. 359, 75 L. Ed. 1117, 51 S. Ct. 532 (1931), wherein it was established by the Supreme Court that the wearing of an armband for the purpose of expressing certain views is a symbolic act and falls within the protection of the First Amendment's free speech clause.

In particular, you are seeking an injunction under 42 U.S.C. of 1983 (Civil Rights Act).

Since the facts of the case may be as important as the law, you must use those witnesses and only those who are most likely to establish the facts you would like on the record. You, therefore, would want to call John, Betty, and possibly Leonard Tinker (father) and Chris Eckhardt. You might also consider Chris's father, William, and John's American history teacher, Aaron McBride (a fictional character).

In calling these witnesses, you need to stress the facts that your clients acted out of deeply felt convictions and that by no means did they wish to display contempt for school authority or wish to cause a disturbance.

During your period of cross-examination of the defendants' witnesses, your purpose is to show that the school authorities singled out a particular type of speech concerning a particular topic (the Vietnam War) to prohibit. Your chief concern is to show that the regulation was unreasonable, or could not reasonably be defended as being necessary to the functioning of the school system.

Other cases you may rely upon are *Burnside v. Byars,* 5th Cir. 365 F. 2d 744 (July 21, 1966), and *Blackwell v. Essaguena County Board of Education,* 5th Cir. 363 F. 2d 749 (July 21, 1966), wherein it was held that a school regulation prohibiting the wearing of "freedom buttons" was not reasonable. The Court stated that school officials " . . . cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution where the exercise of such rights in the school buildings and school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" (*Burnside v. Byars,* 363 F. 2d. 749).

Role 2: Attorneys for School District--Allan A. Herrick and Phillip C. Lovien

Your purpose is to convince the district court judge that he should deny the plaintiffs' request for an injunction.

At the evidentiary hearing (similar to a trial court proceeding), you must not only cite the relevant law but also establish "the facts" of the case.

In citing the law, the following cases may be helpful: *Dennis v. United States,* 341 U.S. 494, 95 L. Ed. 1137, 71 S. Ct. 857 (1951); *Near v. State of Minnesota,* 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931); *Pocket Books, Inc. v. Walsh,* 204 F. Supp. 297 (D. Conn. 1962), wherein it was established that the protections of the free-speech clause are not absolute; and *United States v. Dennis,* 183 F. 2d 201, 212 (2d Cir. 1950), wherein it was asserted that "in each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

Since "the facts" of the case may be as important as the laws cited, you must make every effort to ensure that the record displays those facts which you wish to have on the record. In light of this, you would want to call Dennis Pointer (Mary Beth's math teacher), Andrew Burgess (the high school principal), Leonard Carr (the school board president), and perhaps others.

Your prime concern in examining your witnesses is to display the fact that "there was reason to expect that the protest would result in a disturbance of the scholarly, disciplined atmosphere within the classroom and halls of your schools."

On cross-examination of the plaintiffs, your purpose is only to ascertain whether they were aware of the regulation.

Role 3: John F. Tinker

You are a student at North High School. You are 16 years old. You, your parents, and your friends have been against the American involvement in the Vietnam War from the beginning. You feel that there is no justification for American participation in a foreign "civil war."

You have participated in antiwar protests in the past, and, along with your parents and friends, you decided to wear a black armband to school to display your support for the continuation of the Christmas truce and your grief for those who have died in Vietnam.

Mary Beth and Chris wore their armbands on Monday, but you were a little hesitant. However, after Mary Beth and Chris were suspended, you decided to wear your armband on Tuesday. You felt self-conscious because of the stares your armband drew, but you felt determined that it was your right to express your views in this way. After third period, you were called to the principal's office. Upon your refusal to take off the armband, you were suspended.

Role 4: Christopher Eckhardt

You are 15 years old and you attend Roosevelt High School.

You wore an armband on Monday, the first day of the demonstrations. You are, perhaps, more vocal than the Tinkers about your opposition to the war.

Role 5: Mary Elizabeth (Betty) Tinker

You are 13 years old and you attend Warren Harding Junior High School.

Role 6: Leonard Tinker

You are the father of John and Mary Beth Tinker, and you completely support their feelings in regard to the Vietnam War.

Role 7: William Eckhardt

You are the father of Chris Eckhardt, and you completely support his feelings in regard to the Vietnam War. In fact, you and your wife gave Chris the idea to wear the black armband. After the school authorities declared the wearing of armbands illegal, you were the first to see the possibilities for a test case on "free speech" grounds.

Role 8: Dennis Pointer

You are Betty Tinker's math teacher. Betty entered the room on the Monday of the demonstration wearing her armband. The armband caused a discussion of the war; it lasted all period and completely disrupted your class.

Role 9: Aaron McBride

You are John Tinker's history teacher. The wearing of the armband caused no disruption in your class, and you believe that this form of symbolic protest is akin to "pure speech" and as such is protected by the First Amendment. John is one of your best and hardest-working students; you believe the school board should never have prohibited the armbands.

Role 10: Andrew Burgess

You are the principal of North High School. You heard about the upcoming armband demonstration and called an administration meeting to head off the problem. The administrators, fearing a disruption of the school program, decided to ban the wearing of armbands.

Role 11: Leonard Carr

You are the president of the Des Moines school board. You support the decision of the school administrators because the community is deeply divided on the war and you fear that any disturbance will lead to a major conflict.

Role 12: Hugo Black

You are a Supreme Court justice, a "New Deal" Democrat from Alabama who is sometimes termed a populist. You were very much a part of the constitutional revolution of the Warren Court. However, to brand you as a "liberal" in the fashion of Justices Douglas and Brennan would be to oversimplify the case and lead to error in interpretation.

During your entire judicial career you have fought for "incorporation" (making the Bill of Rights applicable to the states through the "due process" clause of the Fourteenth Amendment). This struggle often led you to align yourself with the liberals. For example, in the censorship cases, Douglas and Black took the same absolutist position that the First Amendment allows no censorship *at all*. However, you have departed from the position usually taken by the liberal bloc when questions of equality have been reviewed by the Court. (The "equality" category of cases commonly includes poverty law, indigents, and protest demonstrations.)

Role 13: Byron White

A lawyer who was known in his college football years as "Whizzer" White, you were elected to the National Football Hall of Fame. You graduated from the University of Colorado, attended Oxford briefly as a Rhodes scholar, and then attended Yale Law School. You practiced law in Denver until you were appointed by President Kennedy to serve under Atty. Gen. Robert Kennedy in the Justice Department.

You are known as a "New Frontier" Democrat, and President Kennedy nominated you to the seat left vacant by the retirement of Justice Whittaker. However, the expectation that you would consistently vote with the liberal bloc proved to be in error. It would be more accurate to describe you as a moderate, since your actions as a Supreme Court justice have placed you clearly in the middle of the controversy between the liberals and conservatives on the Court.

Role 14: John Marshall Harlan

Born in Chicago in 1899, you are the grandson and namesake of a Supreme Court justice. You graduated from Princeton in 1920, Oxford in 1923, and New York Law School in 1924. You were admitted to the bar in 1925, practiced law in New York City, and were appointed to the Supreme Court by President Eisenhower in 1954.

Although your dissent from the decisions of the activist Warren Court have won you a reputation as a conservative, you might more-accurately be described as a firm believer in the strictly judicial nature of the Court's function. You consider it your duty to decide each case according to the law, as the law had been determined.

Role 15: Chief Justice Earl Warren

The years during which you have presided over the Supreme Court have been years of legal revolution. The Warren Court set a new path in race relations *(Brown v. Board of Education of Topeka, Kansas)*, wiping out the legal basis for discrimination and, as it happened, helping to release the long-suppressed emotional results of racism. That decision practically wrote a whole new constitutional code of criminal justice--one that restrains the whole process of law enforcement, from investigation through arrest and trial--and applied the code rigorously to state and local activities formerly outside of federal standards. It also greatly restricted the government's authority to penalize an individual for personal beliefs or associations.

You have favored most of the major changes in constitutional doctrine undertaken by the Court. As a statesman, you have a sense of history, an understanding of people, and firmness of character. You are open, optimistic, and idealistic without being an idealogue. You see good in other human beings, and you are decisive.

Although you achieved your greatest fame as Chief Justice of the Supreme Court, you began your career as a California politician. Prior to your appointment by President Eisenhower to the Court, you served as governor of California.

Role 16: Thurgood Marshall

As part of the "activist" and "liberal" bloc of the Court, you tend to favor individuals against the state and the weak against the strong. You spent 25 years developing your judicial philosophy while serving as a civil-rights lawyer, and you have been intimately associated with the modern civil-rights movement. Your great-grandfather was a Maryland slave; the year you were born, two Negroes were lynched near your home. You were brought up by your parents (your mother taught in an all-black school, and your father was a chief steward at a country club) to be very independent in thought.

You were admitted to the Maryland Bar in 1933; your association with the NAACP began in 1935. From that point on, you, as chief counsel, worked for the principles of the NAACP--to advance the interests of black citizens, to secure their suffrage and to increase their chances to secure an education for their children, employment for their ability, and equality under the law.

Role 17: Abe Fortas

You are renowned for your broad legal knowledge, sound judgment, and liberal philosophy. Although it is not uncommon for Supreme Court justices to change the character of their legal opinions after their appointments to the bench, your performance has been entirely consistent with the reputation you established as a private lawyer. You champion the civil rights of the small and often obscure individual as well as defend such corporate giants as the Coca Cola Co. You aroused national interest when you defended a number of individuals who had been termed "security risks."

Role 18: Potter Stewart

You were appointed to the Sixth Circuit Court of Appeals by President Eisenhower in 1954 and to the Supreme Court in 1958. You assumed the seat that served as the swing vote on a court evenly divided between liberal and conservative factions. (The conservative group in 1958 consisted of Justices Frankfurter, Clark, Harlan, and Whittaker; the liberal group consisted of Chief Justice Warren and Justices Black, Douglas, and Brennan.) The basic difference between these groups is thought to be related primarily to the justices' differing views about the appropriate use of the Court's power to declare unconstitutional the actions of other branches of government. The "liberals" see the Court as a guardian of the individual liberties protected by the Bill of Rights; they tend to interpret the Bill of Rights in a broad fashion. The conservatives adopt a narrow view of the Bill of Rights; in a situation wherein a choice is necessary between individual liberty and the power of the state, the conservatives tend to support the power of the state.

In the majority of the cases in which the Court has divided along liberal/conservative lines (these include only about half of the "civil liberties" cases decided during your tenure), you have clearly sided with those justices commonly identified as conservatives. From 1958 to 1961, when you were considered the "swing vote" on the Court, the justices divided 5-4 along liberal/conservative lines in 42 cases involving issues of individual liberties; you joined the liberals in only nine cases. The significance of your vote diminished somewhat in 1962, when Frankfurter's resignation and the appointment of Justice Goldberg gave the liberals a fairly solid majority.

Role 19: William J. Brennan, Jr.

You were born on April 25, 1906, in Newark, New Jersey. You graduated from the University of Pennsylvania and Harvard Law School.

Probably the most important force in your early life was your father, who worked to establish labor unions in the city of Trenton. When the opportunity arose, he ran for a council seat on the labor ticket. Your father's involvement with the labor movement had the effect of interesting you in labor law, an interest which would much affect your career.

Eventually you were offered a partnership in a Newark law firm because of your expertise in labor law. During this partnership, you became involved in a movement that sought the restructuring of the court system in New Jersey. You felt that the court system would be improved if it were consolidated, because of your belief that courts existed to serve the people and to protect their rights. After a considerable battle, the court system was changed to one of general jurisdiction. Your appointment to the New Jersey Superior Court in 1949 may have been a result of your work in this reform movement.

Although you are considered a liberal judge, this opinion is perhaps based less on any of your decisions than on your personal beliefs about the obligations of citizens. These values forced you to speak out against Senator McCarthy at the peak of the senator's power. Having gained national recognition on the Superior Court of New Jersey, you were appointed by President Eisenhower to the Supreme Court in 1957.

Your two most important decisions were *Baker v. Carr* and *Katzebach v. Morgan*. The former mandated the use of the famous "one man--one vote" principle in the apportionment of congressional districts by state legislatures; the latter decision displays your commitment to individual liberty.

Perhaps an excerpt from one of your speeches best sums up your feelings about the job of the Court: "The constant for Americans, for our ancestors, for ourselves, and we hope for future generations is our commitment to the constitutional ideal of liberty protected by the law. . . . It will remain the business of judges to protect the fundamental constitutional rights which will be threatened in ways not possibly envisaged by the Framers . . . the role of the Supreme Court will be the same . . . as the guardians of (constitutional) rights."

Role 20: William O. Douglas

You are known as a distinguished conservationist, naturalist, and traveler; a prolific writer; and an experienced fisherman and camper. You will eventually serve on the Supreme Court longer than any other justice in history.

You were appointed to the Court by FDR in 1939 when you were 41. Since your appointment, you have been an outspoken advocate of individual liberty, particularly freedom of speech.

You were born on October 16, 1898, at Maine, Minnesota. Your father was a home missionary for the Presbyterian church. As a small child, you had infantile paralysis, and the doctors told you that you would never have the full use of both legs. But you never learned how to be a loser. You climbed and hiked in the mountains every day to rebuild your limbs. While you were growing up, you rode freight cars with hobos, shared meals with them, and slept outdoors with them.

You are probably best known for your advocacy of freedom of speech. A good example of this may be found in the *Dennis v. United States* case, in which a group of men was accused of advocating the forcible overthrow of the government by organizing a group which in turn would advocate such an overthrow. More precisely, the charge was not that the defendants themselves had advocated or organized such action, but that they had conspired and organized to teach others to do so by teaching from books written by Marx, Lenin, Stalin, and others, who in turn were asserted to have advocated forcible overthrow of the government. The statute, as construed and applied to support the conviction of these defendants, was upheld by the majority of the Court. You dissented, remarking that you would have had no difficulty with the conviction if the defendants had been teaching people to commit sabotage or assassinate the president or plant bombs, but that you had found no evidence that such actions had ever occurred.

You are fully capable of doing all your judicial work by yourself, and you probably use law clerks less than any other justice. Because of your extraordinary brilliance, you are the fastest worker of all the justices of this century--except, perhaps, Justice Holmes. The range of your work is vast, running not merely to great constitutional questions but also to matters of taxation and bankruptcy--all of which are difficult questions of the law.

You can often make your point with just one sentence--for example, in regard to a case in which a doctor was excluded from the practice of his profession in New York, you observed: "When a doctor cannot save lives in America because he is opposed to Franco in Spain, it is time to call a halt and look critically at the neurosis that has possessed us."

Adapted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 35-52.

Handout 43

FREE SPEECH v. INTERNAL ORDER

Directions: Study the outline of legal controls governing free speech, below. Then read the paragraph "Ray's Rights" and decide whether each of the 14 actions described is protected by the First Amendment to the Constitution.

The legal controls designed to protect society take three major forms:

In the first form, the government attempts to prevent communication or other conduct which it fears may lead to public disorder.

Devices for Prevention

1. Licensing or permit systems
2. Court injunctions

Considerations for Prevention

1. Doctrine against prior restraint (censorship); clear and present danger test
2. Due-process requirements
   a. Law must be definite, specific, and clear
   b. Law cannot contain undue breadth of restriction
   c. Law cannot give an individual unfettered discretion

The second type of legal control occurs when the government tries to halt communication while it is still in progress (as where the police order a speaker to desist or a crowd to disperse).

In the third form, the government prosecutes communication which has already taken place.

Charges for Prosecution

1. Unlawful assembly
2. Inciting to riot
3. Breach of the peace
4. Disorderly conduct

Considerations for Prosecution

1. Due-process requirements
2. Was the law reasonable (were there other alternatives which would not infringe upon freedom of speech)?
3. Was the law designed to stifle the free exchange of ideas?
4. Was the enforcement of the law aimed at stifling freedom of speech?
   a. Key factors
      --Time
      --Place
      --Manner

Developed by Norman Gross, staff director of the American Bar Association Special Committee on Youth Education for Citizenship.

b. Other factors
--Speaker
--Subject of speech
--Number of demonstrators and observers
--Composition of crowd
--Noise level

5. Doctrine of equal protection

Ray's Rights

Ray Brown is a senior at Public High School. Ray is black. He has been very active in the Afro-American Society during his years at the school, which is coed and has an evenly balanced racial composition. Ray feels that racism pervades the entire school system and that it is especially evident in the actions of the principal of his school. Below is a list of possible methods by which he could express his concern and dissatisfaction. Which of the activities would be protected as "speech" under our Constitution?

1. Ray makes a speech on a street corner near the school in which he calls for an end to racism.

2. Ray hands out leaflets to the students as they enter the school. The leaflets, in obscene and violent language, accuse the school of racism and characterize the principal as a "racist pig."

3. Ray uses a sound truck to broadcast his views in front of the school.

4. Ray pickets in front of the school with a sign saying "End Racism."

5. Ray demands the right to speak about racism to the student body at a school assembly.

6. Ray buys advertising space in the school newspaper to express his views.

7. Ray gets up at halftime of a basketball game and begins speaking about racism in interscholastic athletics.

8. Ray enters the school library and asks for a book on racism in America. When the librarian tells him there is no such book, he sits down and refuses to leave.

9. Ray decides to express his displeasure by refusing to speak at any time during the school day.

10. Ray comes to school dressed like a five-year-old and declares, "I will not dress like a man until I am treated like one."

11. Ray enters the school wearing a black armband to protest its racist policies.

12. Ray burns the American flag in front of the school, saying, "I will not respect this flag until the United States stops its policies of domestic colonialism."

13. Ray throws a rock through a window into the school. Tied to the rock is a note bearing the message "End Racism."

14. When the school committee refuses to replace the principal, initiate black studies, or hire more black personnel, Ray hides a bomb in the building and blows it up.

FREEDOM OF SPEECH: *FEINER v. NEW YORK*

Background

This version of the Feiner case for secondary students presents a classic issue of freedom of speech. Read it aloud to the class and then conduct a discussion based on the questions presented below.

* * * * * * * * * * * * *

In 1951, Feiner, a young college student, set himself up on a street corner in Syracuse, New York, and, using a loudspeaker system mounted on a car, began delivering a speech to a gathering crowd of about 75 to 80 people. The primary purposes of the speech were to publicize a radical political meeting to be held that evening in a local hotel and to protest the fact that city officials had not allowed the meeting to be held at the public school auditorium.

As the crowd gathered, two policemen arrived on the scene and observed most of the speech. In the course of the speech, Feiner referred to the president of the United States as a "bum," to the American Legion as a "Nazi gestapo," and to the mayor of Syracuse as a "champagne-sipping bum" who "does not speak for all the people." In a high-pitched, excited voice, Feiner also shouted, "Minorities don't have equal rights; they should rise up in arms and fight for them."

The crowd was restless, and there was some pushing, shoving, and muttering. A few pedestrians had to step off the sidewalk and into the street in order to pass the crowd. One man in the audience said to the police that if they did not "get that SOB off the box," he would do it himself.

At this point, the policemen requested that Feiner stop speaking. When Feiner refused their requests twice, they arrested him. Feiner was convicted of "disorderly conduct" and sentenced to 30 days in the county jail.

The conviction was appealed to the U.S. Supreme Court on the grounds that it was a violation of Feiner's right to free expression.

Questions for Discussion

1. What should be the responsibilities of the police, the speaker, and the audience?

2. When should the government be allowed to interfere with speech?

--When the government is criticized?
--When violence is about to take place?
--When the speaker offends some people around him?

Reprinted with permission from *Attorney's Sourcebook* (Chicago: American Bar Association, 1975).

3. Should the police have arrested the speaker or the heckler?

4. Should it make any difference that the sidewalks were blocked by those listening to the speaker?

FREEDOM OF SPEECH: CAN PEOPLE SAY ANYTHING THEY WANT?

Feiner *has been rewritten here so that it is appropriate for upper-elementary students. Read the "Issue" aloud and allow time for students to respond, then read the "Background." After reading the "Information" aloud, present the "Probe Questions" for discussion, giving as many students as possible an opportunity to respond.*

* * * * * * * * * * *

Issue

What right should the law hold more important--the right of a revolutionary to free speech or the right of society to be kept orderly and secure? Should people be allowed to say anything they want?

Background

A man who belonged to a revolutionary group stood on a street corner and talked into a microphone. He called the mayor of the city a bum and shouted that the poor people should unite to overthrow America. The crowd became angry and restless.

Information

The right to free speech guaranteed by the First Amendment applies here. The "test" given as to when free speech should be curtailed was handed down by the Supreme Court in *Schenck v. U.S.* (1919) 249 U.S. 47: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the state has a right to prevent." Also the language of *Cantwell v. Connecticut* (1940) 310 U.S. 296 applies here: "The offense known as breach of the peace . . . includes not only violent acts but acts and words likely to produce violence in others . . . when the clear and present danger of riot, disorder, interference with traffic, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

Probe Questions

1. What is the man on the corner saying?
2. What is a revolutionary group?
3. Can someone tell us what is going on?
4. What are the people in the crowd doing?
5. Would you allow this man to continue to speak? Why? Why not?
6. What rights of the people come into conflict in this situation?
7. Would you change your mind if the man were shouting obscenities about certain groups of people?
8. What is the right to free speech? Where is it guaranteed?

Reprinted with permission from *Law in Action: Lawmaking,* by Linda Riekes and Sally Mahe (Mineola, N.Y.: West Publishing Co., 1976), p. 54. Probe questions developed by Faith Haber Galbraith.

Handout 44

WHAT'S YOUR OPINION?

Freedom of the press applies not just to newspapers, books, and pamphlets but also to movies, television, and radio. The government may try to interfere with this press right before material is printed or shown (called *prior censorship*), or it may attempt to stop distribution by confiscating the book or movie. It may also attempt to punish the person who wrote, produced, or sold the publication.

The courts have been very reluctant to interfere with the publication of newspapers and movies before they are shown. Freedom of the press, the U.S. Supreme Court has said, means there will be no prior restraints upon publication. However, the government may confiscate certain types of writings after publication and punish the people who wrote, produced, or sold them.

The survey in this handout contains ten statements of opinion about freedom of the press. In the blank space in front of each statement, print the letter(s) that indicate(s) the extent to which you agree with that statement. The tabulation form at the end of the survey can be used to tally the answers of the entire class.

Opinion Survey

SA--strongly agree
A--agree
D--disagree
SD--strongly disagree

_____ 1. Newspapers and television must be free from all forms of censorship.

_____ 2. News media should not criticize our government because it encourages division in the nation.

_____ 3. Newsmen should not be required to tell anyone where their information comes from.

_____ 4. If newspapers print charges against public officials which are not true, they should be found guilty of libel and forced to pay damages.

_____ 5. Reporters should be free to investigate and report all information available about criminals such as Charles Manson. After all, the public has a right to know.

_____ 6. Photographers and television camera men should be allowed to film criminal trials, so long as they do not disrupt the proceedings.

_____ 7. Every citizen, including reporters, has a responsibility to answer official questions regarding criminal activity, if they know the answers.

The introduction to this handout is reprinted with permission from *Street Law: A Course in Practical Law*, by the National Street Law Institute (Mineola, N.Y.: West Publishing Co., 1975), p. 201. The survey itself is reprinted with permission from *Bill of Rights Newsletter* 8, no. 2, p. 4, published by the Constitutional Rights Foundation.

______ 8. The government should be able to cancel the licenses of radio and television stations if they present slanted news about public officials.

______ 9. High school newspapers should be approved by the faculty advisor or the principal before they are printed to be sure they do not report negative or embarrassing things about the school.

______10. Freedom of the press is more important than any other freedom in a democracy.

TABULATION OF REACTIONS

	SA	A	U	D	SD
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

FREEDOM OF THE PRESS: FREE PRESS IN SCHOOL

Read the following story and then focus a class discussion on the questions suggested below.

School Newspaper

Fred, a senior in high school, wanted to publish a mimeographed newspaper for students so that he could express many of his opinions. He wanted to speak out against the war in Vietnam and against some of the school's rules, like the rule forbidding boys to wear long hair.

When Fred started his newspaper, he asked his principal, Mr. Clyde, for permission. Mr. Clyde said it would be all right if before every publication Fred would turn in all his articles for his approval. Fred agreed and turned in several articles for approval. Mr. Clyde approved all of them, and Fred published two issues of the paper in the next two weeks.

But Mr. Clyde had not expected that Fred's newspaper would receive so much attention. Students were so excited by the paper that they began to organize protests aginst the hair regulation and other school rules. Angry parents objected to Fred's opinions, and telephoned Mr. Clyde to tell him that the newspaper was unpatriotic and should not be published. As a result of the rising excitement, Mr. Clyde ordered Fred to stop publishing. He gave as a reason that Fred's activities were disruptive to the operation of the school.

Do you think Mr. Clyde should stop the newspaper? (check one)

_______Should stop it

_______Can't decide

_______Should not stop it

1. What were Fred's rights and responsibilities in this situation?

2. What were the rights and responsibilities of the principal? Was the agreement between Fred and the principal a binding one?

3. Answer the question at the end of the story as if you were Mr. Clyde. Explain your answer. What other options would you have in this situation? What consequences do you predict would follow from each of those options?

The "School Newspaper" reading is reprinted with permission from *The Role of Law in Society and the Rights and Responsibilities of Citizenship: A Curriculum Guide for Kindergarten Through Grade 12* (Jefferson City, Mo.: Missouri Bar Association and Missouri Department of Elementary and Secondary Education, 1976), p. c-105.

FREEDOM OF THE PRESS: TO SPEAK OR NOT TO SPEAK

The following simulated newspaper article may be used to help students consider a basic issue related to freedom of speech. Read the "article" aloud and then follow the procedures suggested below.

PROTESTERS PROMISE PICKETING WHEN DEAN DELIVERS DISCOURSE

CINCINNATI–John Dean, one of the principal figures in the Watergate scandal, is scheduled to speak at the University of Cincinnati next week. He will be paid a fee of $15,000 for a ninety-minute lecture.

The prospect of Dean's appearance has caused an uproar on the campus and in the city. There are those who feel that a convicted criminal who played an important role in such a high-level crime should not be permitted to speak on campus at all, much less be paid for it. They feel it would indicate approval of his actions by paying him to speak about his wrong doings.

On the other hand, there are people who feel that John Dean has had experiences worth sharing and that he is entitled to be paid for his speech.

Those who oppose Dean's appearance are planning to picket the auditorium in hopes of persuading people not to attend.

University officials fear a confrontation and are presently debating whether to cancel Dean's appearance.

Classroom Procedures

1. Ask students to prepare letters to the editor in response to this article expressing their personal views and explaining their reasons for holding those views.

2. Ask students to consider the following questions in their letters:
--Why do you think John Dean should (not) be allowed to deliver his speech?
--Does Dean have a right to be paid for his speech?

3. After the letters have been written, discuss the following questions with the students:
--Do protesters have the right to picket outside the auditorium and try to discourage others from entering?
--Should convicted criminals have the right to speak at public gatherings?
--What types of people, if any, would you *not* permit to speak in public? Why?

Activity developed by Benny Miles. Reprinted with permission from *Focus on Law* 3, no. 3, pp. 6-7, published by the Center for Law-Related Education.

FREEDOM OF THE PRESS: JONATHAN'S ESSAY

Read the "Background" aloud to the students and then introduce the "Questions for Discussion" below.

Background

The children of Berkshire Elementary School were studying the early pioneers. In one lesson, they were asked to write a paper that included a conversation between two pioneer children. The paper was to be as true to life as possible, but no other directions were given.

When Jonathan handed in his paper, the teacher was appalled. Jonathan's essay described a conversation between two pioneer children who were having a heated argument over a game they were playing. The conversation included some swear words--language usually considered inappropriate for a school situation. Jonathan's teacher was horrified when she read the essay. She not only verbally scolded him but also insisted that he redo the assignment.

Jonathan was very disappointed. He had worked hard on the essay. He felt that the conversation was written in a realistic way and that the language used was appropriate for that particular situation. Thus, he refused to do as the teacher asked.

Questions for Discussion

1. Was Jonathan justified in including swear words in his essay? Should he be able to do this?

2. Was his teacher correct in asking Jonathan to rewrite his essay? Even if no mention had been made of the type of language to be used?

3. If the teacher permits Jonathan to include swear words in this essay, should he and other children be permitted to do the same in other essays?

4. Who should decide this issue--Jonathan, the teacher, the principal, Jonathan's parents, a judge? Explain.

Activity based on a lesson developed by Emmy O'Mahony Oetzel. Reprinted by permission from *Focus on Law* 3, no. 3, p. 6., published by the Center for Law-Related Education.

Handout 45

TWICE THE PRICE

Note: The developers of the materials suggest that participants should receive the case with role descriptions about two days prior to the mock trial.

Background

Tommy Troublemaker is a student in the fifth grade at Equity Grammar School. The price of milk in the cafeteria has been 3 cents a carton, but when it doubles to 6 cents, Tommy decides that the students should strike back.

Tommy and Paul Publisher register this complaint with the student council, of which neither is a member, but no action is taken.

In spite of a well-known school rule which forbids the students at Equity from publishing flyers that criticize the school administration, Tommy and Paul decide to print a flyer on Paul's mimeograph machine, which he recently received as a birthday present. The flyer is printed and circulated around the school, but it is unsigned. It says:

> *"Twice the price--unfair! Mr. Paunch* [*the principal*] *should have known better. We won't stand for it! No one eat in the cafeteria next week. Everyone bring your own lunch."*

The school rules also forbid students from bringing their own lunches to school.

Although the flyer is not signed, Mr. Paunch suspects that Paul is the one who printed it because he knows that Paul has a mimeograph machine. He has a hunch that Tommy is the "man behind the scenes" who probably wrote the flyer and had the idea to organize the boycott. He decides to put both on trial for violating school rules. Punishment for the offense is suspension from school for one week and a notation in the student's disciplinary records.

The trial takes place before a jury of five: three students and two teachers.

Shortly before the trial of Paul and Tommy, Steve Snitch reports to Mr. Paunch his knowledge about the case. Steve was present in Paul's house when the flyer was printed; he saw Paul printing it; and he heard Tommy, who was also present, brag about preparing the flyer. All of Mr. Paunch's hunches are thus confirmed.

Roles

The case proceeds to trial. Assign the following roles and ask participants to study them carefully:

Lesson developed by Faith Haber Galbraith.

1. Prosecutor--He or she is an officer of the school, perhaps the assistant principal. He or she will call as witnesses Mr. Paunch and Steve Snitch to testify and may also call Paul.

2. Defense counsel--Two lawyers; one for Paul and one for Tommy.

3. Tommy--He admits his role, but claims that he did nothing wrong; he says that the school rule which forbids the publication of flyers is wrong and that he should not be found guilty of wrongdoing so long as what is said in the flyer is true.

4. Mr. Paunch--He testifies that he has seen the flyer and that it violates the school rule for two reasons: (a) the school administration should not be criticized because doing so would weaken the school; (b) bringing lunches to school would not only undermine school discipline but also create a health hazard. Thus, Tommy is advocating illegal conduct.

5. Paul--He admits that he owns a mimeograph machine and that it was used to print the flyer.

6. Jurors--They are asked to determine whether it has been proven to their satisfaction that Paul and Tommy did what they are accused of doing. They are also asked to determine whether what Paul and Tommy are accused of doing should be a crime. However they vote, they will be asked to explain their reasons.

7. Judge--His or her job will be to run the trial smoothly and to make certain that the testimony of the witnesses does not depart too much from the script set out above. (Of course, normally the judge does not tell the witnesses what to say, but merely rules on the admissibility of evidence and keeps the trial running smoothly. In our hypothetical case, however, the judge's role has to be different to assure that the trial proceeds smoothly and according to plan.)

8. Steve--He testifies as described in the "Background." He admits (when asked by defense counsel) that he has been thrown out of school twice before for lying to teachers. But he swears now that he is telling the truth.

Handout 46

THE TRIAL OF JOHN PETER ZENGER

Background

John Peter Zenger lived in New York in 1735, before there was a United States of America. New York was a colony of Great Britain. Zenger was a printer who published a weekly newspaper, the *New York Weekly Journal*.

The law at that time did not permit anything to be printed that criticized the government. Government officials were said to be above criticism.

John Peter Zenger believed that the colony of New York was being ruled poorly. The governor, whose name was William Cosby, had not been elected by the people. He had been chosen by the King of England.

Zenger wrote in his newspaper that Cosby only put his friends in office and that he allowed French ships to spy on the New York defense system.

Cosby had Zenger arrested for breaking the law against *libel*. Officials burned copies of Zenger's newspaper.

The main issue of the trial was the definition of libel.

The lawyer for Governor Cosby said libel meant criticizing the government. Even if people told the truth, they did not have the right to put the government in danger by criticizing it.

Alexander Hamilton, who was Zenger's lawyer, said that people should have the freedom to print the truth. He believed that Zenger should not be found guilty unless it was proved that he published false statements in his newspaper.

Questions for Discussion

1. Which definition of libel do you believe is better? Why?

2. In time of war, should newspapers be allowed to print information about where American troops are? Why or why not?

3. If you were in public office, would you want the newspaper to print criticisms of you even if they were true?

4. Should newspapers be allowed to criticize public officials?

5. What do you think happened to John Peter Zenger? Do you think he was found guilty?

Lesson developed by Faith Haber Galbraith.

Handout 47

SEARCH AND SEIZURE GUIDELINES

Guidelines

1. The general rule for search warrants is that one search warrant allows the search of only one person, place, or vehicle. In New York, one search warrant may allow the search of any number of persons, places, or vehicles; however, police are advised that before using one warrant for such a multiple search, they should be certain that there is probable cause to justify the search of each place. If the warrant includes authorization for the search of several places, and there was no probable cause for police to search one of those places, the entire warrant will be thrown out. Police are advised to get one warrant for each searched place when possible.

2. The search warrant must specify exactly what place is to be searched. If police want to search an apartment, the warrant must contain not only the exact street address but also the apartment or floor number. If the police want to search a vehicle, the vehicle should be described as fully as possible, including the license and registration numbers and the name or physical description of the owner or driver.

3. Police officers must indicate why they believe there is probable cause for suspecting criminal activity when they apply for a warrant. In filing an application for a search warrant, officers must indicate specifically what property they want to search for, where they expect to find it, and how they got this information. The last is most important. The officer cannot get a warrant simply on the basis of a hunch that a search might turn up something illegal.

4. Police officers requesting search warrants must swear under oath that the information they are giving is true to the best of their knowledge. This requirement discourages police from making up information in order to get search warrants, because they would be subject to arrest for making false statements.

5. The search warrant must be issued by a properly authorized judge.

6. Even if a police officer obtains a search warrant, the legality of the search warrant may be challenged at a subsequent trial. Sometimes a judge makes a mistake by issuing a search warrant without probable cause.

Cases

The cases below will give you some idea of how complicated this topic can be. For each of the cases, indicate whether, in your opinion, the police officer conducted a reasonable search or seizure. Explain your answer.

Guidelines reprinted with permission from *The Criminal Justice System* (New York: Open Doors, 1976).

1. Edward Coolidge was arrested in connection with the murder of a 14-year-old girl. The attorney general of the state of New Hampshire, authorized by state law to issue search warrants as a justice of the peace, issued a search warrant for Coolidge's car. It was believed the car was used by Coolidge on the night of the murder. The same attorney general took personal charge of the case, and he later served as chief prosecutor at Coolidge's trial. Coolidge argued that the search warrant was illegal because it was issued by someone involved in the actual investigation of the case, not by a neutral and fair judge.

2. Police got a warrant to arrest Archie Hill. They went to Hill's apartment and found there a man who "fit the description exactly" of Hill. The man claimed to be a Mr. Miller, not Hill. Nevertheless, they arrested the man as Hill and searched the apartment, finding a pistol and loaded ammunition clip. Police later found out that the man really *was* Miller, not Hill. They subsequently arrested Hill and used the pistol found in his apartment to convict him of a robbery charge. Hill objected to the search of his apartment, since it was Miller, not Hill, who was found in the apartment.

3. Police got a warrant to arrest Ted Chimel for the burglary of a coin shop. They went to his home, arrested him, and then, without a search warrant, proceeded to search the entire three-bedroom house, including the attic, the garage, and a small workshop. During the search, the police found some of the stolen coins. Chimel objected to the search. He agreed that the police had a right to arrest him, but argued that if they had wanted to search his entire house, they should have obtained a search warrant.

4. Having some information that Antonio Rochin was selling narcotics, police went to his house. Finding the outside door open, they entered and then forced open the door to Rochin's room on the second floor. Inside they found Rochin sitting partly dressed on the side of the bed. On a nightstand beside the bed, the police saw two capsules and asked, "Whose stuff is this?" Rochin grabbed the capsules and swallowed them. Police jumped on Rochin and tried to get the capsules out of his mouth. When that failed, he was handcuffed and taken to a hospital, and at the direction of the police his stomach was pumped. Among the substances brought up out of Rochin's stomach were two capsules which proved to contain morphine. Rochin was convicted of drug possession. He objected on the grounds that police had no right to forcibly pump his stomach and that doing so constituted an unreasonable search.

5. Paul Breithaupt, truck driver, was involved in an automobile accident in which three people were killed. Police at the scene found Breithaupt unconscious, his eyes glassy and bloodshot, and a nearly empty liquor bottle in his truck. Breithaupt was taken to a hospital where, while he was still unconscious, a blood sample was taken from his body. The blood contained a sufficient percentage of alcohol to indicate that Breithaupt was intoxicated. He was convicted of manslaughter. Breithaupt objected to the use of the blood test as evidence against him, claiming that it had been obtained as the result of an unreasonable search.

6. Police arrested Armando Schmerber at a hospital while he was receiving treatment for injuries received in an accident involving a car

that he had apparently been driving. At the direction of a police officer, a blood sample was taken from Schmerber against his wishes. The blood test revealed enough alcohol in his blood to make him legally intoxicated, and he was later convicted of driving under the influence of an intoxicating liquor. Schmerber objected to the use of blood test as evidence against him, claiming that it had been obtained as the result of an unreasonable search.

7. In an attempt to get evidence of adultery against his wife so that he could get a divorce, Abraham Sackler illegally forced his way into the apartment in which his wife was living, separately from him. With the evidence he obtained, he applied for a divorce. His wife objected on the grounds that Sackler had entered her apartment illegally and that, therefore, the search was unreasonable.

8. Mexican police, alerted by U.S. agents to Henry Bruley's smuggling activities, searched Bruley's car and house in Tijuana and found evidence which led to his conviction. Bruley objected to the search because the Mexican police did not have a warrant.

9. Police looked through three open garbage cans a few feet from the back porch of Robert Edwards's house. They found evidence of narcotics, and Edwards was arrested, tried, and convicted. Edwards objected that the search of his garbage cans was an unreasonable search.

10. On the basis of information from an informant, police arrested James Draper on drug charges. Draper was convicted. He appealed the decision on the grounds that because the information was obtained by the police from an informant, it was hearsay and therefore not sufficient to establish probable cause. Therefore, he argued, the search following the arrest was unreasonable.

11. After the killing of a police officer, the police arrested John Smith. They learned that Smith had been shot and that the bullet was still in his body. (They also knew that before he died, the police officer shot the man who killed him.) The police asked for a search warrant which would allow a police doctor to operate on Smith and remove the bullet. Smith objected on the ground that such a search would be unreasonable.

SEARCH AND SEIZURE: THE SEARCH WARRANT

One way to initiate a discussion of search and seizure with secondary students is to pass out copies of a sample search warrant (Handout 48). After students have examined the document and shown that they understand the terminology and condition of the warrant, the resource person may want to talk informally about his or her personal experiences with search warrants. Some suggested questions for class discussion are provided here.

1. Does this example of a search warrant meet the requirements of the Fourth Amendment? Explain.

2. (Regarding part 5 of the warrant.) Under what circumstances might a police officer want to be able to make a search at any hour of the day or night? Why limit other searches to between 6 a.m. and 9 a.m.?

3. (Regarding part 6.) Under what circumstances might police officers want to be able to make a search without announcing themselves first?

4. (Regarding part 7.) Why do you think the law requires the warrant to be executed (used) within ten days of its issuance?

Reprinted with permission from *The Criminal Justice System* (New York: Open Doors, 1976).

Handout 48

SAMPLE SEARCH WARRANT

1. SUPREME COURT (COUNTY COURT)
(CRIMINAL COURT OF THE CITY OF NEW YORK)
(DISTRICT COURT), (CITY COURT),
(TOWN COURT), (VILLAGE COURT).

(VILLAGE) (TOWN) (CITY) OF ______________________________
COUNTY OF ______________________________
STATE OF NEW YORK ______________________________
Hon. ______________________________, issuing Judge (Justice)

2. To any police officer of the ____________________ Department

3. You are hereby authorized and directed to search for and to seize the following property: ______________________________
____
____

4.(a) If applicable: (if inapplicable, strike the following paragraph) You are authorized and directed to search the following premises:

(b) If applicable: (if inapplicable, strike the following paragraph) You are authorized and directed to search the following name or described person(s): ______________________________
____

(c) If applicable: (if inapplicable, strike the following paragraph) You are authorized and directed to search the following vehicle:
____
____

(d) If applicable: (if inapplicable, strike this paragraph) This court, having hereinabove authorized the search of the aforedescribed premises, further directs, pursuant to CPL Sec. 690. 15 (2), the search of any person present thereat or therein.

(e) If applicable: (if inapplicable, strike this paragraph) This court having hereinabove authorized the search of the aforedescribed vehicle, further directs, pursuant to CPL 690 15 (2), the search of any person present thereat or therein.

5. This warrant must be executed between 6 a.m. and 9 p.m.

or

If supported factually, CPL 690.35(3) (a), strike the above clause, and replace it with the following:
This court hereby specially determines that adequate grounds exist for authorizing the search to be made at any hour of the day or night, and the court so directs.
If supported factually, include the following clause; if not, strike it:

6. This court hereby specially determines that adequate grounds exist for authorizing any executing police officer to enter the premises to be searched without giving notice of his authority and purpose.

7. This warrant must be executed not more than 10 days after the date of its issuance and any property seized pursuant hereto shall be returned and delivered to the court without unnecessary delay.

Dated:________________________
________________________,N.Y.

____
Judge(Justice) of the_______
Court______County, New York

SEARCH AND SEIZURE: WHEN ISN'T A WARRANT NECESSARY?

The cases in this activity deal with searches conducted without warrants. They may be used to stimulate a general class discussion or as topics for small-group decision-making exercises (see pp. 79-87). In each case, ask students to decide whether the police should have obtained a warrant before searching.

1. Willie Robinson, Jr., was arrested for driving his car after his driver's license had been revoked. Following the arrest, Robinson was completely searched and a package containing heroin was found in an inside coat pocket. Robinson was also charged with possession of drugs. Was the search legal without a warrant? Explain.

2. Harriet Burr had spent the last few weeks in Europe, and her plane had just landed at JFK Airport in New York. Her luggage was searched in Customs and nothing was found. Then the Customs inspector examined her ski poles. They came apart, and packages of heroin were found inside. She was arrested for possession of drugs. Was the search legal without a warrant? Explain.

3. Officer Michael Brand was on patrol one afternoon when he spotted an escaped convict coming out of a telephone booth. Officer Brand chased the felon, tackled him, and placed him under arrest. After arresting and handcuffing him, Officer Brand searched the man's clothes and found a gun in the man's jacket. Was the search legal without a warrant? Explain.

4. Adam Smith was at home when two police officers rang his doorbell and identified themselves. They said they wanted to speak to him. Smith let them in and asked what they wanted. They said they had information that stolen jewelry and furs were hidden in the apartment. They asked permission to search the apartment. Smith said, "Okay, go ahead, look all you want." They conducted their search and found some furs and jewelry. Smith said they belonged to his wife. The police nevertheless arrested Smith for possession of stolen merchandise. Was the search legal without a warrant? Explain.

5. Officer McFadden, a Cleveland plainclothes detective, became suspicious of two men who were standing on a street corner in the downtown area at about 2:30 in the afternoon. One of the suspects walked up the street, peered into a store, walked on, started back, looked into the same store, and then rejoined his companion. The other suspect repeated this behavior, and between them the two men went through this performance about a dozen times. They also talked to a third man, and then followed him up the street about ten minutes after he left. The officer, thinking that the suspects were "casing" the store for a stickup and might be armed, followed and confronted the three men as they were talking again. He identified himself and asked the suspects for their names. When the men did not respond, the officer spun one of them around, patted his

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Reprinted by permission from *The Criminal Justice System* (New York: Open Doors, 1976).

breast pocket, and felt a pistol, which he removed. The man was arrested and charged with carrying a concealed weapon. Was the search legal without a warrant? Explain.

6. Police brought Daniel Murphy to the police station for questioning after his wife had been found dead. The police suspected Murphy of killing his wife, and they wanted to scrape underneath his fingernails. Mrs. Murphy had been strangled, and the police thought that the person who did it would probably have small pieces of skin under the fingernails. Although Murphy had come to the station voluntarily, he refused to allow the scraping of his nails. Police scraped his nails anyway. They found traces of skin, blood, and strands of the fabric from Mrs. Murphy's nightgown. Murphy was arrested for murder. Was the search legal without a warrant? Explain.

7. Police chased a man who had just held up a bank with a gun into an apartment building and up to the third floor. The robber entered an apartment and shut the door. The police forced their way into the apartment and arrested the robber. Was the search (entering the apartment) legal without a warrant? Explain.

8. A police officer on patrol passed by a parked car. As he passed by, he looked into the car through the closed window and saw a shotgun on the back seat. At this point, the owner of the car returned and was asked if he had a license for the gun. When he said he didn't, he was arrested. Was the search (looking into the car) legal without a warrant? Explain?

Follow-up Questions

1. Are these exceptions to the requirement of a search warrant reasonable? Explain.

2. Are there other circumstances when a police officer should not need a search warrant? Explain.

Handout 49

THEY SEARCH LOCKERS, DON'T THEY?

The Fourth Amendment to the Constitution stipulates that people have the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure. . . ." As with many other constitutional issues, questions involving interpretation arise, for example:

1. What areas are protected under the phrase "persons, houses, papers, and effects"?

2. What is considered an "unreasonable" search or seizure? Is the existence of a warrant the deciding factor?

3. Are students on school grounds protected by this constitutional provision, or do special circumstances apply?

Read through the following list and put an "X" next to those places which you feel are (or should be) covered by the Fourth Amendment protection of "persons, houses, papers, and effects."

_____ automobile

_____ pocketbook

_____ coat hung on hook in hallway

_____ wallet

_____ trumpet case

_____ school locker

_____ apartment

_____ dormitory room

_____ garbage can

_____ rest room

_____ desk

_____ briefcase or bookbag

_____ phone booth

_____ school bus seat

_____ gym locker room

_____ looseleaf notebook

Reprinted with permission from *Juvenile Justice: A High School Curriculum Guide* (Sewell, N.J.: Institute for Political/Legal Education, 1974), pp. 89-91.

Compare your opinions with those of the other students in the class. In what areas was there the most agreement? The most disagreement?

The most controversial area in regard to school searches is the student locker. A student's locker is the closest thing to private space in a school; it is used for storing not only books but also personal things. In most schools, the office keeps a record of the combinations to all locks, or certain school officials have passkeys which will open all lockers in the building.

Under what conditions can a student's locker be opened and searched?

Certainly in a real emergency--for example, as a result of a telephoned bomb threat to the school--a locker search would be justifiable without official warrant or consent of the student(s) involved. Most cases are a good deal less clear-cut, however.

Consider the following hypothetical situations:

Case A

The school librarian, Mr. Ritchland, informed the social studies department faculty that three expensive books on ancient Greece, which had been purchased recently by the school for reserve use but had not yet been checked in, processed, and labeled by the library, were already missing. Miss Sullivan, a world history teacher, said that she had recently given her students a term paper assignment and that she knew that one boy had decided to write about the government of Athens. She suggested that the librarian check with the boy, Bruce Dandridge.

Because of a rash of book thefts during the past year (hundreds of dollars worth of books had "disappeared"), the school was considering posting a guard at the entrance to the library. Mr. Ritchland decided to take the information directly to the school principal. He asked that Bruce's locker be inspected to search for the books.

The principal, in the librarian's presence, opened the boy's locker while Bruce was in class and discovered the new ancient history books, which had not been checked out from the library. When confronted with the evidence, Bruce admitted that he had taken them, but argued that his right to privacy had been violated by the locker search. Because he had been in some disciplinary trouble before in school, and in view of the strict school rules against misappropriation of school property, a suspension hearing was called, and Bruce came with his parents and their family lawyer.

Questions: What are the main issues raised in this case? How does the interest of Bruce's privacy balance out against the school's interest in preventing theft? If this case were to come before a court, how do you think it would be decided?

Case B

Frank Perkins had a free period plus his lunch period back to back on Monday. Since school rules permitted students to leave the grounds when they did not have class commitments, he went downtown to the Sound and Fury record store. The store owner, Jack Maloney, was sure that he had seen Frank put one or more albums under his coat and leave the store without paying for them, but he was unable to catch up with Frank.

As an independent businessman, Mr. Maloney was concerned about the increased costs of shoplifting. He thought he recognized Frank as a student from nearby River View High School, and upon checking with the school over the phone he was able to ascertain his name.

Later that afternoon, Detective Shableski of the local police came to the school following a complaint from Maloney and asked the school principal whether he could have permission to search the boy's locker for the record(s). Consent was given.

Questions: If stolen record albums are found, are they legally admissible evidence? A police search without a warrant is valid only if consent has been given. Who has the authority to give consent? Only Frank Perkins? If you are a student in a school, do you give to the administration the right to consent to a search of your locker because the latter is school property? Many schools require students and/or parents to sign a letter giving permission for locker searches before issuing lockers. If a locker is protected from warrantless search, can you be forced to give up that protection by signing a release?

SEARCH AND SEIZURE: CONFLICTING RIGHTS

Dealing with the Fourth Amendment and the general subject of search and seizure may be difficult for a resource person in an elementary classroom. This activity may be helpful. (In addition, the activity in Handout 49, which deals with searches of school lockers, may be adapted for use with upper-elementary students.)

To begin the activity, read the "Problem" aloud and encourage students to suggest answers to the questions. Then ask if anyone can see what the real issue is in this situation. Read the "Issue" and make sure all the students understand it. Then read the "Information" and ask the class to reconsider the questions.

Problem

Mr. and Mrs. Botein could not find their tape recorder anywhere. A neighbor said that the Conley family that lived across the street and had teenage boys had a tape recorder that looked just like the Boteins'. The Boteins got mad and demanded to look in the Conleys' house for their tape recorder.

Do the Boteins have a right to do this? Why? Why not?

What if one of the neighbors had said that they had seen one of the Conley boys take the tape recorder across the street from the Boteins' house into his own home?

Issue

What right should the law hold more important--the right of the Conleys to privacy, or the right of the Boteins to get back their property?

Information

The courts have set down certain regulations to ensure people's right to privacy. By law a search warrant issued to a police officer by a judge would be needed before a search of the Conleys' house could be made. There must be good evidence to prove that the Boteins' tape recorder was actually in the Conley house and had been stolen before a search warrant could be issued.

These regulations arise from the way the Supreme Court has chosen to interpret the Fourth Amendment.

Reprinted with permission from *Law in Action: Lawmaking,* by Linda Riekes and Sally Mahe (Mineola, N.Y.: West Publishing Co., 1975), p. 52.

Criminal Law

GUIDELINES FOR TEACHING ABOUT THE CRIMINAL JUSTICE SYSTEM

Criminal law is usually an exciting subject for people of all ages. This subsection includes a variety of activities for approaching the topic from different perspectives and with different kinds of groups.

Handout 50, "Introduction to Criminal Law," contains a brief definition of "a crime" and an explanation of the purposes of penalties; it can be used as the basis for a simple reading/discussion lesson. The next activity, "What Is a Criminal?," requires students to examine their own preconceived ideas about "criminals" and to locate various examples of actions and behavior along a continuum of criminality.

"Police Dispatcher" and "Passing Sentence" give students opportunities to simulate the kinds of decisions made by law-enforcement officers and judges. "Interrogations and Confessions" uses *Miranda v. Arizona* as a case study of the rights of the accused and the legal limitations on the actions of law-enforcement officials. Finally, "The Case of Billy Fredrickson" was designed to be used for teaching about criminal law in elementary classrooms.

In using any or all of these activities, the resource person might want to substitute the details of actual local cases for the background situations presented here.

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Handout 50

INTRODUCTION TO CRIMINAL LAW

1. WHAT IS A CRIME?

A crime is an act committed or omitted in violation of a public law forbidding or commanding it. It can also be defined as any social harm made punishable by law.

Our laws are based upon what society believes should be prohibited or encouraged. The legislature and the courts try to put these beliefs into laws. In regard to criminal law, they must decide how to encourage people not to commit an act or encourage them to comply with the law. Usually in criminal law, society tends to regulate conduct by the threat of penalties rather than by trying to encourage certain activity. For example, it would be impossible to give someone a dime every time they stopped at a red light. Rather, if a person does not stop, society punishes him by issuing a ticket.

Society is said to outlaw certain acts for various reasons, some of which are to protect life and property, to protect individual freedoms, to preserve the system of government and to maintain the morality of the community. Ideally, the goal of the law is to regulate conduct so that people can live within their society without chaos and under the best possible circumstances.

Problem 6

A commission is established to rewrite the criminal laws. You are a member. Should the following acts be considered criminal? Give your reasons.

(a) A group of people are gambling on a corner.

(b) Nat and Joanne are college students who live together.

(c) Robert is a narcotics addict who pushes heroin to support his habit to anyone who will buy.

(d) Susan is caught with a pound of marijuana. Will it make any difference if she is caught with a joint?

Reprinted with permission from *Street Law: A Course in Practical Law*, by the National Street Law Institute (Mineola, N.Y.: West Publishing Co., 1975), pp. 21-23.

(e) Lilly approaches John for purposes of prostitution. What if John approaches Lilly?

(f) Knotts is an alcoholic who begs for money and makes a little too much noise when he is high.

(g) A baby is left on a street corner in Chicago. Mark walks by and ignores him. Does it make any difference if Mark is the father?

(h) John and Joe are homosexuals who live together as if married.

(i) Ted robs a food store. What if his family has no food?

2. CRIMINAL PENALTIES

Five possible purposes of criminal penalties are:

1) protection of society; 2) punishment; 3) deterrence; 4) rehabilitation; and 5) retribution.

Protection of society means taking a criminal off the streets so that he can not commit crimes again. The idea of *punishment* is to make the person regret his crime by imposing some form of penalty upon him. Punishment can come in one of several forms: jail terms, fines or some form of probation, or a suspended sentence, or a combination of these. The form and extent of punishment is supposed to reflect the seriousness of the crime and the background and particular circumstances of the defendant.

The third purpose, *deterrence* means that others who either know about the possibility of punishment or have seen others being punished will not commit similar acts themselves. The fourth aim, *rehabilitation*, is a relatively recent concept. It developed along with the idea that anti-social behavior is the result of deep-seated psychological and sociological problems and that with proper care and assistance, people who commit crime could be transformed into useful members of society. This care and assistance may consist of educational services, job training, and social or psychological counselling. *Retribution*, the fifth purpose, is usually defined as paying back the debt owed to society because of the committing of the crime.

Problem 7

Assume the commission found all the examples in Problem 6 to be criminal and is setting a penalty for each one. Which of the following penalties would you assign for each crime? Give reasons for your choices:

1) prison term (set the number of years)

2) fine

3) probation (being allowed to remain out of prison only under certain conditions such as regular employment and reporting once a week to a probation officer, in the case of a narcotics treatment program)

4) suspended sentence (a prison term is imposed, but it is suspended and the person placed on probation for a number of years; if the person is again arrested for another offense while on probation, the full prison term or any part of it for the previous offense can be imposed)

5) halfway house (usually includes such activities as residence in a halfway house, full-time employment, school, involvement in a rehabilitative program, etc.)

WHAT IS A CRIMINAL?

Many students, probably as a result of watching television programs, have fixed ideas about the kind of person who is a criminal. In this activity, students are first asked to describe their conceptions of a criminal, using open-ended statements--in this case, "When I think of a criminal, I think of. . . ." As students begin to work out a composite picture of a criminal, post the answers on the board; try to consolidate the information into relatively brief statements. Included should be such information as whether the person is male or female or black or white and where he or she lives.

After students have spent a few minutes putting together a composite picture of a criminal, distribute copies of Handout 51, "Characteristics of Criminals," and ask them to read it. When all the students have finished reading the handout, ask if anyone thinks the composite picture should be changed. Make whatever changes are suggested.

Distribute copies of Handout 52, "Which of These People Are Criminals?," and tell the students to place each of the individuals described at some point along the continuum of criminal activity. Reproduce the continuum on the chalkboard. When the students have completed their individual worksheets, repeat the process with the whole class, entering each letter on the continuum at the point where the consensus of the group would place it. Note which cases provoke the widest divergence of opinion. Then focus a class discussion on the following questions:

--What activity did the class feel was most likely criminal?

--What activity did the class feel was least likely to be considered criminal?

--Which of the activities did the class feel least sure of? Why?

--How did the class go about deciding which activities should be considered "criminal" while others should not?

Continuum activity developed by Robert Estreicher.

Handout 51

CHARACTERISTICS OF CRIMINALS

There is a common belief that the general population consists of a large group of law-abiding people and a small body of criminals. However, studies have shown that most people, when they are asked, remember having committed offenses for which they might have been sentenced if they had been apprehended. These studies of "self-reported" crime have generally been of juveniles or young adults, mostly college and high school students. They uniformly show that delinquent or criminal acts are committed by people at all levels of society. Most people admit to relatively petty delinquent acts, but many report larcenies, auto thefts, burglaries, and assaults of a more serious nature.

One of the few studies of this type dealing with criminal behavior by adults was of a sample of almost 1,700 persons, most of them from the State of New York. In this study, 1,020 males and 670 females were asked which of 49 offenses they had committed. The list included felonies and misdemeanors, other than traffic offenses, for which they might have been sentenced under the adult criminal code.

Ninety-one percent of the respondents admitted they had committed one or more offenses for which they might have received jail or prison sentences. Thirteen percent of the males admitted to grand larceny, 26 percent to auto theft, and 17 percent to burglary. Sixty-four percent of the males and 27 percent of the females committed at least one felony for which they had not been apprehended. Although some of these offenses may have been reported to the police by the victims and would thus appear in official statistics as "crimes known to the police," these offenders would not show up in official arrest statistics.

Such persons are part of the "hidden" offender group. They evidently at one time or another found themselves in situations that led them to violate the criminal law. However, most people do not persist in committing offenses. For many the risk of arrest and prosecution is deterrence enough, while others develope a stake in a law-abiding way of life in which their youthful "indiscretions" no longer have a place.

What is known today about offenders is confined almost wholly to those who have been arrested, tried, and sentenced. The criminal justice process may be viewed as a large-scale screening system. At each stage it tries to sort out the better risks to return to the general population. The further along in the process that a sample of offenders is selected, the more likely they are to show major social and personal problems.

From arrest records, probation reports, and prison statistics a "portrait" of the offender emerges that progressively highlights the disadvantaged character of his life. The offender at the end of the road in prison is likely to be a member of the lowest social and economic groups in the country, poorly educated and perhaps unemployed, married, reared in a broken home, and to have a prior criminal record.

This excerpt of the 1967 report of the President's Commission on Law Enforcement and the Administration of Justice was reprinted with permission from *Focus on Law* 1, no. 2, pp. 6-7, a publication of the Center for Law-Related Education.

Handout 52

WHICH OF THESE PEOPLE ARE CRIMINALS?

Directions: Working independently, place the letter identifying each of the people described below at the point on the continuum line which best represents your judgment of whether that person is likely to be engaged in criminal behavior.

MOST LIKELY NOT A CRIMINAL ACTIVITY

MOST LIKELY A CRIMINAL ACTIVITY

A. A man who plays poker for money with his friends every week.
B. An individual who smokes marijuana regularly.
C. A person who always jaywalks.
D. An M.D. who sets up a clinic and performs abortions.
E. A woman who fails to pay her income tax.
F. A man who beats someone up.
G. A youth who takes something that doesn't belong to him.
H. A person who commits suicide.
I. An individual who gets drunk regularly.
J. A gambler who pays taxes to the government.
K. A woman who engages in prostitution.

Developed by Robert Estreicher.

POLICE DISPATCHER

This activity, which is simple enough to be used with groups of all ages, is designed to emphasize the ideas that some offenses and situations are more serious than others and that law-enforcement officers must often make decisions on the basis of the importance or seriousness of various situations.

Distribute copies of Handout 53, "Requests for Police Assistance," and ask students to circle the numbers of their choices. Collect the handouts, tally the results, and record the five "winning" choices on the chalkboard. Then focus a class discussion on the following questions:

--Why would you send police to these five situations rather than the others described?

--What could a police officer do in each of these situations? How might the other situations be resolved without the assistance of police?

--Do you think that this activity gives a realistic idea of a police officer's job?

--What other kinds of decisions do you think police might have to make in their day-to-day activities?

Activity based on a lesson developed by Melvin R. Brown. Originally published in *Focus on Law* 2, no. 2, pp. 5-6, a publication of the Center for Law-Related Education. Used with permission.

Handout 53

REQUESTS FOR POLICE ASSISTANCE

It is 9 p.m. on a busy Friday night just before Christmas. Because of a manpower shortage, only 50 percent of the calls for police assistance can be answered. You are the police dispatcher. To which five of the following calls would you dispatch a police officer?

1. Auto reported stolen.
2. Elderly lady mugged on street.
3. Drunk wielding a knife in a public bar.
4. Six teenagers reported to be loitering on a street corner.
5. Woman who locked her keys in her car.
6. Complaint of loud music at a neighborhood party.
7. Child who has fallen into a storm sewer basin.
8. Fender-bender accident in a shopping center.
9. Pot party reported in a city park.
10. Report of a two-car collision at a busy intersection with possible bodily injury.

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PASSING SENTENCE

Some activities in this subsection are focused on the day-to-day decisions that must be made by law-enforcement officers. This activity helps students understand the kinds of decisions that are made by judges. It can be presented most effectively with the help of a resource person who is a judge or court referee, public defender, prosecuting attorney, or probation officer. More than one class period will be required, unless two back-to-back periods can be arranged.

The basis for this activity is Handout 54, "You Be the Judge." After distributing the handouts, ask students to read the background material and answer the questions, working individually or in small groups.

The next step is a simulated hearing in which students are assigned to play the roles of judge, probation officer, prosecuting attorney, and defense attorney. (See pages 47-49 for guidelines on conducting a simulation.) Allow some time for the two attorneys to prepare arguments for the judge and questions for the probation officer. The judge then conducts the hearing, first calling on the probation officer to present the report and then listening to arguments from the attorneys. Finally, the judge decides on sentences for the four defendants and explains his or her reasoning for each decision.

During the follow-up discussion, the student playing the part of the judge should be specifically asked the following questions:

--Did the probation report provide you with all the information you felt you needed to make a decision in each case?

--To what extent were you influenced by the past record of each of the defendants?

--During the arguments by attorneys, which reasons were most important in influencing your decisions?

To conclude the activity, refer students back to the questions at the beginning of Handout 54. Ask the class:

--Would you answer questions 1-3 differently now?

--If your views have changed, what has influenced your thinking to make you change your attitudes?

The resource person may want to wind up the session by talking informally about the ways in which the sentencing process works in the local community. (Would the local judge or judges have disposed of these cases as the simulation "judge" did? Do all judges approach the issue of sentencing in the same way? Can some judges be expected to be stricter than others? What are some of the resource person's first-hand experiences with the sentencing process?)

Adapted with permission from *Bill of Rights Newsletter* 8, no. 1, pp. 21-23, a publication of the Constitutional Rights Foundation.

As a variation on the format of this activity, the resource person might want to divide the entire class into groups of four or five and conduct several simulated hearings simultaneously. In a group containing more than four, the extra person(s) can play additional members of the probation department team.

Handout 54

YOU BE THE JUDGE

Are Judges Too Lenient?

Newspapers are filled with the stories of criminal acts committed by members of our society. As we read these stories, we are outraged at the violence that is committed by one individual against another.

Most acts of violence in America occur between family members or those who are acquainted. However, for the past several years there has been a growth in the amount of gang activity in our major cities.

Killings committed by gang members may be the most wanton form of violence now being perpetrated in the United States. Often it is impossible for the police to determine with any precision who is responsible. Furthermore, it is often impossible to explain why these outbursts of violence occur. Often they involve unknown and totally innocent individuals who happen to get in the way. Recently, in Los Angeles, a bullet fired during a gang melee hit no member of either gang but killed a high-school athlete running on the school track nearby.

When the individuals responsible for committing criminal and violent acts come before the courts, do you believe they are punished appropriately for their behavior? Or do you think judges sentence the guilty too lightly and leave too many dangerous criminals at large because of lenient sentencing practices? Answer each of the following questions:

1. From what I read and hear others say, I think the general public feels sentences given by judges in my community are:

_____ quite a bit too lenient

_____ a little bit too lenient

_____ usually about right

_____ a little bit too harsh

_____ quite a bit too harsh

2. I personally believe sentences given by judges in my community are:

_____ quite a bit too lenient

_____ a little bit too lenient

_____ usually about right

_____ a little bit too harsh

_____ quite a bit too harsh

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3. The state legislature establishes penalties for various crimes. I (do, do not) think these penalties should be assigned in every case.

Discuss your answers to these questions with other members of your class. Try to be as specific as possible in citing the reasons for your answers. Also discuss why you do or do not believe that tough penalties will help to cut the number of violent acts which occur in your community.

Is Prison a Deterrent?

Many Americans believe that punishment is the most important consideration in determining the sentence of a criminal. Others believe that punishment will not deter those who wish to commit criminal acts, and that programs must be established which help them improve their behavior sufficiently while in prison so that they can be released into society. Still others take the view that putting most criminals in institutions simply makes matters worse because they learn to be better criminals while in prison, become embittered by the way they are treated, and upon release are more dangerous than they would have been if they had been placed on special probation with supervision in the community, where they could learn how to live successfully among others.

The next two paragraphs contain a description of a crime of violence which occurred in Los Angeles in 1972. After you have read it, respond to the questions at the end according to your own feelings of what would be a fair and correct sentence for the young men convicted in this case.

> Three students were victims of a bloody assault resulting in the death of one of them. The attack occurred outside the Wilson High School gymnasium after a high school basketball game Friday evening, April 6, 1972. Two students were accosted and ordered to hand over their jackets: one, black leather with silver-zippered pockets; the other, a suede coat with a fur collar. The students resisted and were beaten, and the jackets were stolen. A third young man, a friend who had been following behind, interceded in an effort to stop the theft. He also was beaten, knocked to the ground, and kicked severely in the head. He never regained consciousness and died two days later.
>
> All four young men, Manuel Rosa, 18, Robert Curry, 19, John Cross, 21, and Terrence Bacon, 23, were convicted of murder and robbery.

After reading the case, I believe the four defendants should be sentenced by the judge to:

_____ state prison (a felony offense; more than one year)

_____ to the local jail (a misdemeanor; less than one year)

_____ be placed on probation after confinement in county jail for _____ months

_____ be placed on probation without serving any jail time

_____ pay a fine only

_____ be remanded to the department of corrections for diagnosis and recommendation as to what the final sentence should be (this choice almost always leads to a state prison sentence).

Who Should Get Probation?

After a trial has taken place or the defendants have entered pleas of guilty, the judge faces the most difficult task of all: determining what he or she believes will be a sentence that is best, both for society and for the defendants. To help the judge determine a fair sentence, the probation department conducts an investigation and presents a report which recommends a sentence for the defendants. The attorneys for the defendants and the prosecutor have an opportunity to argue for or against the recommendations made by the probation department.

In this case, the probation department turned in the following report to the judge. Read it carefully and then decide how you would sentence each of the four defendants.

Probation Report

The People of the State of California vs. Manuel Rosa, Robert Curry, John Cross, Terrence Bacon

Manuel Rosa, 18, Robert Curry, 19, John Cross, 21, and Terrence Bacon, 23, have all been convicted of 187 Penal Code (Murder), Count I; 211 Penal Code (Robbery), Counts II and III. The crime for which they were convicted occurred on Friday evening, April 6, 1972, after a high school basketball game. There was clear testimony at their trial linking all four defendants with the theft of a black leather maxicoat and a suede coat. During the theft of the coats, both owners were beaten by a gang of young men and the victim, a third party and friend of the owner of one of the coats, interceded in an effort to stop the theft. He was beaten, knocked to the ground, and kicked in the head severely. At an autopsy it was determined that his death was due to severe blows to both sides of the head.

Defendant Rosa admitted that he had kicked at the victim, Foster, but had not hit him. All of the defendants denied having been responsible for the killing, but during the trial witnesses linked them to the robbery and beatings sufficiently to convince the court of their guilt.

After the trial and prior to sentencing, it is the responsibility of the probation department to conduct a thorough investigation of the convicted defendants and to make sentencing recommendations to the judge along with reports which include all obtainable information about the men, including any previous police records.

Manuel Rosa

In these reports the probation department indicated that Manuel Rosa was in the second half of his senior year in high school; he lived in the home of his mother and stepfather; he was an outstanding athlete and had been offered a number of athletic scholarships; and that he worked part time, owned his car, and had $300 in the bank. They also found that he had been arrested several times, once for robbery (the stealing of a radio record player and $5 in cash), once for driving an automobile without the owner's consent (for which he had received noncourt probation), and once for receiving stolen property, although no petition was filed against him in juvenile court.

Robert Curry

Robert Curry left school at age 18 during the 12th grade because of a poor attitude toward school. He lived at home with his mother and stepfather and had a long juvenile and adult history beginning with a series of arrests for burglary, driving autos without the owners' consent, setting off the sprinkler alarms at his high school, and gambling, until he was finally made a ward of the juvenile court and placed on juvenile probation from 1968 to 1969. As an adult, he pleaded guilty to petty theft and was fined $100 or ten days in jail; he was involved in a serious gang incident in which a man was murdered, but was released because the district attorney's office rejected the complaint; he was found not guilty on a charge of rape of a female of unsound mind; he was arrested and then released for the discharge of a firearm in an inhabited dwelling; he was arrested for robbery and released (district attorney rejected the complaint); and, finally, he was arrested and charged with this murder for which he was found guilty--a total of seven arrests for serious crimes since the age of 18.

John Cross

John Cross was a high school graduate with one year at Los Angeles Trade Tech. He lived with his parents and his younger brother. Although he had been arrested several times--once for burglary, once for grand theft auto, and once for robbery--he had never been tried or convicted of any of these crimes.

Terrence Bacon

Terrence Bacon quit high school before graduation but later enrolled in Southwest Junior College, majoring in drafting. He had a long arrest record as a juvenile and an adult, beginning in 1964, for delinquency, battery, theft, glue sniffing, assault, disorderly conduct (intoxication), forcible rape, robbery, burglary, and possession of marijuana. Several of his crimes led to his being placed in California Youth Authority or county camps. In each instance his institutional record was extremely poor; he was a troublemaker and was not judged to have benefited from the experience. Several of his assault charges were based on serious beatings of younger boys--once so serious as to have caused a broken jaw and teeth.

Now that you have read the probation report, what penalty would you give to each defendant if you were the judge? Be prepared to explain your reasons.

Rosa	Curry	Cross	Bacon	
____	____	____	____	One year or more in the state prison
____	____	____	____	Less than one year in the local jail
____	____	____	____	Confinement in the local jail for _____ month(s), followed by probation
____	____	____	____	Probation, without serving jail time
____	____	____	____	A fine; no probation or confinement
____	____	____	____	Transfer to the department of corrections for diagnosis and recommendations.

INTERROGATIONS AND CONFESSIONS

One way to deal with criminal-justice procedures is to break them into smaller and, consequently, more manageable pieces. This activity examines interrogations and confessions. Read the "Background," making sure that students understand the issues involved in the Miranda case, and then present the "Problem" for students to consider.

* * * * * * * * * * *

Background

In a famous case, *Miranda v. Arizona*, (1966), the Supreme Court of the United States ruled that a person accused of a crime must be informed of the following *before questioning begins*:

1) That he has a right to remain silent;

2) That anything he says can be used against him in a court of law;

3) That he has a right to the presence of an attorney (if he cannot afford an attorney, the court will appoint one prior to any questioning); and

4) That at any point during any interrogation he may refuse to answer further questions until an attorney is present.

Only after such warnings have been given, and an opportunity to exercise one's rights allowed, may an individual knowingly and intelligently waive (give up) these rights and agree to answer questions or make a statement.

In this case, Ernesto Miranda was poor, uneducated and mentally disturbed. He was accused of kidnapping and rape. He was taken to a police station where he was identified by the victim. He was then shut in an "interrogation room" with two police officers who questioned him intensively for two hours. The officers did not tell Miranda that he had the right to remain silent and to have a lawyer. At the end of the two hours, the officers emerged with a written, signed confession. The Supreme Court ruled that the confession could not be used at Miranda's trial because he had not been informed of his rights. The exclusionary rule, discussed in the Search and Seizure section, will not allow any illegally obtained evidence to be used at a trial.

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The *Fifth Amendment* reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The *Sixth Amendment* reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Problem

Nancy is arrested for murder under a valid arrest warrant. At the station, the police question her for four hours under hot lights without giving her any rest, food or water. Nancy confesses to two other murders as well as the one they have arrested her for. She has not been warned of any rights she might have. Each confession she signs begins with the statement: "I understand my legal rights and hereby waive them voluntarily."

(a) In the case above, did Nancy legally waive the rights guaranteed to her in the *Miranda* decision?

(b) What if the police fully advise Nancy according to *Miranda* but she was intoxicated with alcohol? Drugs?

(c) If the police say all the things listed in *Miranda*, will anyone ever confess?

(d) What are the reasons for the tight restrictions listed in *Miranda*?

(e) If James was stopped while walking 2 blocks away from the above murder scene (just after the murder), could the police question him before giving him the *Miranda* warnings?

(f) If James confesses but it is ruled that James' confessions to the murders were illegal, do you think that he could be prosecuted for them anyway?

THE CASE OF BILLY FREDRICKSON

This simplified case study can be used to introduce elementary students to some of the issues related to criminal law. Read aloud the "Background," then focus a class discussion on the "Review Questions" to help students comprehend the facts of the hypothetical case and clarify the circumstances, terms, and characters. Then read aloud the "Issue" and conclude the activity by presenting the "Follow-Up Questions."

Background

Billy Fredrickson had a gun. He decided to take it with him when he robbed a liquor store, although he didn't plan to use it.

When Billy pointed the gun at the store owner and told him to put up his hands, the gun went off accidentally. The bullet hit the store owner in the head and killed him.

Billy took all of the money from the store and ran.

Review Questions

1. Who is Billy Fredrickson?
2. What does "accidentally" mean?
3. What crime(s) did Billy commit?
4. Can someone tell us what is going on in this case?
5. Did Billy intend to kill the man?

Issue

Billy was convicted of murder. Though he had intended only to rob his victim, not kill him, he was convicted of a special kind of murder called *felony murder*. Billy's decision to commit the serious crime (felony) of robbery is considered enough intent on his part to constitute murder if it turns out that he has killed someone in the course of the robbery.

Follow-Up Questions

1. If you were a member of a jury, would you vote to convict Billy of murder?

2. Even though Billy did not intent to murder the store owner, why could he be found guilty of murder?

Lesson developed by Faith Haber Galbraith.

Civil Law

GUIDELINES FOR TEACHING ABOUT THE CIVIL JUSTICE SYSTEM

Before presenting any of the activities in this section, the resource person should make sure that students understand the difference between criminal and civil law. Law-education materials often deal with only criminal law, and the differences and relationships between the two kinds of law are seldom made clear in such materials. Furthermore, the criminal-justice system generally gets more space in the print media and more time on television and radio. Criminal law is the "glamorous" side of the legal system; civil suits are rarely publicized unless the litigants are prominent personalities or the case is likely to establish a precedent.

Two major points about civil law must be emphasized: (1) civil law is concerned with conflicts over the *private* rights of individuals and (2) in civil cases individuals, rather than states or other levels of government, are the "prosecutors."

The following examples could be used to illustrate situations that might lead to civil cases (lawsuits):

1. Harry backed his car over his neighbor's lawn and knocked over a picket fence.

2. Sally agreed to buy Mr. Hipplewaite's car for $50 down and $40 a month for 15 months, but she is six months behind in her payments.

3. Ted's hair fell out after he got a permanent at the Be Lovelee beauty salon.

4. Mary Anne and Jeanne refused to pay their rent until the owner of their apartment house painted the kitchen as he had promised.

5. Mrs. Pope sued her next-door neighbors because she slipped on their icy sidewalk and broke her leg.

FAMILY LAW: MARRIAGE

Laws regulating marriage have traditionally been the province of state governments; consequently, such requirements as the minimum legal age for marriage and the mandatory waiting period between application for and issuance of a marriage license may vary from state to state. However, the general intent and scope of statutes governing marriage are remarkably similar throughout the country, especially now that state restrictions on interracial marriages have been declared unconstitutional.

Handout 55, "Marriage and the Law," contains background information, two short case studies, and discussion questions designed to introduce secondary students to the concept of marriage and family law. "The Case of Brigham Reynolds," which consists of both teacher notes and a student handout, adapts one of these two case studies for elementary students. Either activity could form the basis of a debate, mock trial, or moot court (see "Strategies" section).

Handout 55

MARRIAGE AND THE LAW

Who can get married?

If a person is still married to someone else, he or she obviously can not get married until the first *spouse* (husband or wife) dies or until a court order ends the first marriage. In fact, a person who marries again while an earlier marriage is still in effect is guilty of the crime of *bigamy*.

The law does not allow people to marry certain close relatives. For instance, in most states a person who marries or has sexual relations with his or her children, parents, grandparents, brothers, sisters, aunts, uncles, nieces or nephews is guilty of *incest*. In some states, first cousins cannot marry.

For most young people, the biggest legal barrier to getting married is the age requirement. In many states, a man must be at least 18 years old and a woman at least 16 years old to get married under any circumstances. (This is called the *minimum legal age*.) Young people under 18 must usually have the written permission of their parents to get married. However, if they fail to get the required parental permission, most state courts will uphold the marriage after they reach the minimum legal age for marriage.

If a couple meets all the above requirements, what steps do they actually take to get married? First, they generally must have a brief physical examination. In most states, this involves a simple blood test for *syphilis* given by a private doctor or a public clinic. (The cost is usually less than $5; it is sometimes free at a clinic.)

After they have received the results of the blood tests, the couple goes to the clerk of the court or the marriage license bureau to apply for a license. The clerk will ask questions about names and ages of the couple, the blood relationship between the couple, any previous marriages, and names of parents or guardians. The couple must swear to the truth of all of the information that is given and then pay a small fee (usually less than $10). There is often a short waiting period before the couple can return to the clerk's office to pick up the license. Some states also have another waiting period after picking up the license before the marriage can be performed.

Any of the following persons may actually perform a marriage ceremony: a judge, a minister, or a clerk of the court who has been granted authority by law. The law does not require the ceremony to follow any particular form.

States vary greatly in their rules concerning marriages, but one rule is generally true: if a marriage was legal in the state or country where it was performed, it will be recognized as legal in any other state or country.

Adapted with permission from *Street Law: A Course in Practical Law*, by the National Street Law Institute (Mineola, N.Y.: West Publishing Co., 1975), pp. 117-19.

Summary

For a *valid* (FULLY LEGAL) marriage, a couple must

1. Both be above the minimum statutory age for marriage (usually 18 for males and 16 for females).

2. Both be single.

3. Not be closely related to each other.

4. Have taken any required physical exams or test.

5. Have carried out the requirements involved in applying, paying, and waiting for the marriage license.

6. Have the marriage ceremony performed by a person authorized by law to do so.

Problem 1

Jim Reynolds is a member of a religion that encourages men to have two or more wives. Jim marries Ivy in Salt Lake City, Utah, following all of Utah's marriage laws. Later, he decides to carry out his religious duties by also marrying Olive.

--If Utah has a typical bigamy law, which, if any, of Jim's marriages is valid under Utah law? Which would be valid if the family travels to other states?

--Does the Constitution's guarantee of "freedom of religion" affect your answer?

Problem 2

Harvey Loving, a white man, and Diana Banks, a black woman, got married in Washington, D.C., following all local laws. They moved to Virginia, which at that time did not allow interracial marriage. The Lovings were tried and convicted for breaking Virginia's law. Both were sentenced to one year in prison. The judge agreed to suspend the sentence if the Lovings would promise to stay out of Virginia for the next 25 years. They immediately filed an appeal to the U.S. Supreme Court and asked that Virginia's law against interracial marriage be declared unfair and unconstitutional.

--How would you decide this case, and why?

Answer to Problem 1

Jim's marriage to Ivy is valid under Utah law; any subsequent marriages are not valid because of the bigamy law. Even if the family travels to other states, only the marriage to Ivy will be recognized because a marriage legal where performed will be recognized as legal in all other states.

This case is based on the landmark case of *Reynolds v. United States* (1878). In *Reynolds,* the U.S. Supreme Court stated that polygamy was "odious to Western civilization" and that the First Amendment's guarantee of freedom of religion did not protect a person who engaged in religious practices specifically made criminal or otherwise forbidden by statute.

Questions for Discussion: Should laws prohibiting bigamy continue to exist? Is its "odiousness" to Western civilization sufficient reason to forbid polygamous marriages? Are there other reasons?

Answer to Problem 2

This hypothetical case is based on the famous case of *Loving v. Virginia* (1967), in which the U.S. Supreme Court decided that Virginia's antimiscegenation statute violated the equal-protection and due-process clauses of the Fourteenth Amendment. When this suit was begun, 16 states still had similar laws. However, *Loving* is considered to have invalidated all those laws, though most have remained on the statute books.

Questions for Discussion: Does your state have such a statute? How do you think the state of Virginia argued its side of the case in *Loving*--i.e., that the antimiscegenation statute was constitutionally permissible? (They said that marriage had traditionally been subject to state regulation without federal intervention, under the Tenth Amendment, and that the equal-protection clause was not offended because blacks and whites were punished equally by the statute.)

FAMILY LAW: THE CASE OF BRIGHAM REYNOLDS

Distribute copies of Handout 56, "One Wife Too Many," and ask the students to read about Brigham Reynolds. Discuss with them the Anti-Bigamy Act passed by Congress in 1862, and help students identify and review the facts of the case. Clarify the circumstances, terms, and characters if necessary. The following questions should help determine how each student responds to the case:

--Who was Brigham Reynolds?

--What is a *Mormon?*

--What was the law in the Utah territory in 1878 concerning marriage?

--What is *bigamy?*

--In what way was Brigham being a devout and religious man?

Allow as many students as possible the opportunity to respond to the issues of the case. Then focus a class discussion on the following questions:

--Should Brigham be forced to give up one of his two wives? Why? Why not?

--Whose rights came into conflict in this situation?

--What right should the law hold more important--the right of Brigham to follow freely the teachings of his church or the right of the order of society not to be upset by actions that disrupt it?

Probe questions developed by Faith Haber Galbraith.

Handout 56

ONE WIFE TOO MANY

Brigham Reynolds used to live in the Utah territory and had two wives who lived with him. Brigham was a Mormon. The Mormon Church taught that men could have more than one wife. Brigham was a devout and religious man and strictly followed all the teachings of the Church. However, there was a law in the Utah territory that said Brigham could have only one wife at a time.

Should Brigham be forced to give up one of his two wives? Why? Why not?

Whose rights came into conflict in this situation?

Note to teacher:

ISSUE:

What right should the law hold more important—the right of Brigham to follow freely the teachings of his Church; or the right of the good order of society not to be upset by actions that significantly disrupt it?

INFORMATION:

This story is taken from Reynolds v. U. S. (1878) 98 U.S. 145.

In 1862 Congress passed an Anti-Bigamy Act which made it a crime called **bigamy** for a person to have more than one husband or wife alive at the same time. The U. S. Supreme Court ruled against Reynolds (1878) stating that Congress had the power to regulate the form of marriage in the United States.

Justice Waite delivered this opinion:

"Marriage, while from its very nature a sacred obligation, is nevertheless in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties with which the government is necessarily required to deal."

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CONSUMER LAW

Many different kinds of classroom strategies can be used to present content about consumer law. Students might role-play various situations revolving around consumer decisions and problems, or the resource person might want to conduct a mock trial based on an attempt to resolve a consumer dispute via a civil lawsuit. Suggestions for using these and other activities are included in the "Strategies" section.

Before presenting a session on consumer law, the teacher or resource person might want to assemble information and sample materials from local consumer assistance agencies. Many state, city, and county legal departments maintain consumer offices. Local and regional chapters of the Better Business Bureau are other potential sources of materials and assistance. Some of these agencies may be able to provide speakers or programs.

The scope of a consumer-law activity can be broadened by building some extension activities around advertising techniques and practices. Learners of all ages will find it enlightening to clip out and analyze advertisements from local and national publications. A class discussion can be focused on the following questions:

1. Why is a particular advertisement appealing? (Or why not?)
2. What is the advertiser trying to persuade people to do?
3. Are the arguments in the ad based on facts or opinions?
4. How might the advertisement be misleading? (For example, does it omit certain important information?)

Although no specific activities for teaching secondary students about consumer law have been included here, Handouts 57 and 58 contain background information that will help students understand basic content and effectively use a variety of learning strategies. Handout 59, "Consumer Quiz," can be used for reinforcement and review at the end of the unit or session.

The activity entitled "What Is a Contract?" and its accompanying handout, "Matt and Frank," can be used to introduce elementary students to the basic elements of consumer law.

Handout 57

CONSUMER Q & A

Q: What is a consumer?

A: Anyone who uses products and services. In some instances the definition of the word *consumer* is broadened to include persons affected by the use of products and services.

Q: Who are consumers?

A: You, your family, your friends and neighbors--everyone you know is a consumer.

Q: How does consumer law affect you?

A: In many potential ways. For example, suppose--

--A door-to-door salesman talks you into ordering magazines you don't want, which you pay for and never receive.

--A lending agency loans you money to buy a car without telling you how much interest you are being charged or the total cost involved.

--A home-repair firm undertakes to repair your roof and leaves it in worse condition than it was to begin with.

--An auto dealer rolls back the speedometer on a car and sells it to you, representing it as a "near new" vehicle.

--An insurance company refuses to honor a claim that appears to be covered under your insurance policy.

--A new radio you received as a gift does not work.

--A pot of cooking oil ignites and explodes, burning you severely.

Q: What is the meaning of the phrase "product and service responsibility?

A: A product or service should reasonably fulfill the expectations of the ordinary purchaser. Part of that expectation is that suppliers of goods and services are competent, honest and stand behind their products or services. Reputable business people recognize and accept this responsibility.

Q: What do governments do to promote product and service responsibility?

A: Both state and federal governments attempt to regulate products and services.

Some examples of regulatory standards set by state governments are:

Adapted with permission from materials developed by Richard W. Laugesen.

--The licensing of doctors, dentists, lawyers, accountants, engineers, contractors, plumbers, electricians, real-estate agents, insurance adjusters, beauticians, barbers, liquor and food-preparation establishments, and many other kinds of occupational groups and retail establishments.

--State food and drug laws.

--State consumer protection acts.

--State consumer credit codes.

Some examples of national regulatory standards are:

--Federal food and drug laws.

--The National Traffic and Motor Vehicle Safety Act (1966).

--Federal motor vehicle safety standards (1967).

--The federal Consumer Credit Protection Act ("truth-in-lending" law) (1968).

--The federal Consumer Product Safety Act (1972).

Q: Aside from meeting legislative and regulatory standards, what are the responsibilities of a supplier of products or services?

A: A supplier has the obligation to:

--Deal honestly and fairly with consumers.

--Provide reasonable competence in providing a product or service.

--Test and inspect the product or service.

--Foresee hazards or risks connected with the product or service.

--Ensure that a product is "reasonably" safe. (Some hazards are inherent and obvious; for example, knives cut, guns shoot, glass breaks, gasoline burns.)

--Warn of dangers that may not be obvious to a user or consumer.

--Comply with both imposed standards and implicit standards to which a reasonably prudent manufacturer or supplier would comply under the same or similar circumstances.

--Honor any warranty, express or implied.

--Honor and abide by any contractual agreement.

Q: What are the responsibilities of a consumer?

A: A consumer has the obligation to:

--Use reasonable care in shopping for a product or service. (Deal with reputable, competent people; beware of "something for nothing"--if it appears "too good to be true," it probably is not true; don't be afraid to ask for identification and references; watch out for "disclaimers"; don't be swayed by "puffing" or advertising; read and understand before signing anything, and make certain all blanks are filled in and that the document is complete before signing.)

--Use reasonable care in using a product or service. (Read labels; follow directions; find out if you don't know something; be aware of possible hazards while using a product.)

--If a product is defective or some service unsatisfactory, notify the seller or supplier immediately; do not continue to use a defective product or anything made defective because of improper service. (If satisfaction cannot be obtained, contact an appropriate protection agency for information and assistance; if it appears that legal assistance may be required, contact your attorney, legal aid, or neighborhood legal service office for information and assistance.)

Q: Where can you obtain information about a product or service?

A: Try one or more of the following sources:

--Better Business Bureau

--Local (city or county) district attorney consumer office

--State attorney general office

--Commercially published consumer reports (check at your public library)

--Regional office, Consumer Product Safety Commission

--Regional office, Federal Food and Drug Administration

--Regional Federal Information Center

--Local chambers of commerce

Q: What can you do if you feel you have been victimized by a supplier of goods or services?

A: If satisfaction cannot be obtained directly from the merchant, try one or more of the following strategies:

--File a complaint with the state office of consumer affairs. That agency will assign an investigator and institute statutory enforcement procedures if there has been a violation of state consumer protection laws.

--File a complaint with your local district attorney's consumer affairs division. This agency will assist where it can and can bring about criminal enforcement procedures if there has been a violation of law.

--File a complaint with the Better Business Bureau. This agency can provide information and assistance by way of coordination through other appropriate agencies, but has no direct enforcement remedies available to it.

--If the only resource turns out to be civil proceedings, contact your attorney, legal aid, or neighborhood legal assistance agency for advice. In many cases, reasonable adjustment can be arranged without direct legal action. Be sure, however, that you are fully aware of your rights before you sign any release or agree to any settlement.

Q: What are the "civil" grounds for recovery against a supplier of products or services?

A: The following violations may be grounds for recovering damages from suppliers:

--Against a supplier of products: misrepresentation, negligence (in design, manufacturing or assembly, or failure to warn), breach of warranty (express warranty, implied warranty, negligent failure to warn), strict liability (liability without proof of negligence).

--Against a supplier of services: misrepresentation, negligence, breach of contract

Q: What types of losses can be recovered or compensated for in a civil damage suit against a supplier of products or services?

A: Consequential damages proximately resulting from the wrongful act or omission. Some examples of types of consequential damage are:

--Value of product or cost of repair.

--In some instances, consequential damage to other property and loss of use of property.

--If injury involved: medical expense, lost wages, pain and suffering, permanent disability or disfigurement, impairment of earning capacity.

--If death is involved: net pecuniary loss resulting to statutory beneficiaries as a result of a death.

--Attorney's fees and certain costs if provided by statute.

Q: What can we expect to happen in the future in the field of consumer transactions?

A: Because of growing consumer awareness and the growing demand for product and service responsibilities, we can expect a corresponding increase in the responsibilities of consumers. For our own safety and well-being, we should be informed and aware. Prevention, rather than after-the-loss solutions, should be the goal.

Handout 58

CONSUMER GLOSSARY

Advertisement. A visual, oral or written message designed to induce a person to enter into an obligation or acquire an interest or title in property.

Assumption of risk. The act of voluntarily exposing oneself to injury or damage with knowledge and appreciation of the danger and risk involved.

Bait and switch. The technique of advertising something at a low price to attract customers--then trying to talk the customer into buying a higher-priced item.

Civil lawsuit. A suit by one private citizen (or corporation) against another for damages, declaration of rights, injunction, etc. (Compare with definition of *criminal action* below.)

Comparison shopping. Looking for an item in more than one store to find the lowest price; comparing different brands of the same product to find the best buy.

Consumer. One who uses products and services. The definition sometimes includes persons affected by use of products and services.

Consumer assistance agency. A source of information and help for people who feel that they have been victimized by a supplier of goods or services.

Consumer responsibility. Reasonable care in shopping for a product or service (prevention), reasonable care in use of the product or service (prevention), reasonable care and conduct after a product or service is found to be defective or unsatisfactory (reasonable adjustment or solution).

Contract. An agreement between two or more persons consisting of a promise or mutual promises which the law will enforce, or the performance of which the law in some way recognizes as a duty.

Contributory negligence. Failure to do something which a reasonably prudent person would do, or doing something which a reasonably prudent person would not do (under the same or similar circumstances) to protect himself or herself from injuries, damages, or losses.

Credit. The system that allows people to buy now and pay later; such a privilege usually requires the payment of "interest" or a "time price differential."

Adapted with permission from a vocabulary list compiled by Richard W. Laugesen.

Criminal action. Prosecution by a government of a person or corporation arising out of the alleged commission of a crime. The objective is determination of guilt. (Compare with definition of *civil lawsuit* above.)

Defective. Not reasonably fit for the ordinary purposes for which it was intended or may reasonably be expected to be used. A defect may have arisen out of design, manufacture, packaging, labeling, or inspection while the product was in the control of the supplier. To be *unreasonably dangerous,* the product, because of the defect, must have created risk of harm to persons or property which an ordinary user would not reasonably expect or created a greater risk of harm than the ordinary user would reasonably expect.

Disclaimer. Notification that there is no warranty or guarantee or that the warranty or guarantee is somehow limited (for example, such phrases as "as is," "not returnable," "guaranteed against defects in materials and workmanship for 30 days").

Duty to warn. The obligation of the seller of a product to use reasonable care to warn the user or consumer of possible dangers that might result from use of the product. This duty to give warning is discharged if the product is labeled in a manner reasonably calculated to inform the user of the danger(s).

Fault. A wrongful act, omission or breach.

Fraud. A dishonest act; something done to deceive or cheat (another term for *misrepresentation,* defined below).

Interest. Money charged for the use of money or credit.

Misrepresentation. Words or conduct which create an untrue or misleading impression about a product or service in the mind of another. For misrepresentation to be actionable, the representation must have been made deliberately, with the intent that it be acted upon; moreover, it must in fact have been relied and acted upon with the result of damage or loss.

Negligence. The failure to do an act which a reasonably prudent person would do, or the doing of an act which a reasonably prudent person would not do, under the same or similar circumstances, to protect others from injuries, damages, or losses.

Pyramid promotional scheme. Any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration for the opportunity or right to receive compensation in return for inducing other persons to become participants in the program.

Statute of frauds. A legislative enactment requiring that certain agreements be in writing in order to be enforceable (for example, purchases of real estate, contracts that cannot be performed within one year, and purchases of goods having a value in excess of $500).

Statute of limitations. A legislative time limitation on the right to sue or seek criminal prosecution.

Strict liability. Liability imposed regardless of fault (for example, a supplier who sells a defective product is liable for harm caused by the product even though all possible care has been exercised in the preparation and selling of the product).

Supplier. One who provides products and services (for example, manufacturers, wholesalers, retailers, salesmen, agents of all types, doctors, lawyers, dentists, barbers, plumbers).

Time price differential. Money charged for use of money or credit (another term for *interest* or *finance charge*).

Trademark. A mark used by a person or entity to identify goods and distinguish them from the goods of others.

Trade name. A word, symbol, device, or any combination thereof used by a person or entity to identify a business, vocation, or occupation and distinguish it from others.

Unreasonable, knowing use of a defective product. Exemptions of a supplier from liability for one or more of the following reasons: (1) the consumer knew the product was defective or not in compliance with the claimed warranty and that it created a risk of injury; (2) the consumer, having such knowledge, used or continued to use the product voluntarily; and (3) the consumer's use or continued use was a proximate cause of subsequent damages or injuries.

Warning. Notice to a user or consumer of a danger connected with the use or storage of a product if such a danger would not be obvious (see *duty to warn*).

Warranty. An agreement, express or implied, by a supplier of a product that the product has certain characteristics.

Handout 59

CONSUMER QUIZ

1. What is a consumer?

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2. Are you a consumer? (Yes or No) ____________________

3. List five examples of suppliers of products or services.

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4. List ten responsibilities of a consumer.

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5. Does a manufacturer have a duty to warn of dangers that are obvious? (Yes or No) ____________________

6. Must a warranty be in writing to be enforceable? (Yes or No) _____

7. Which of the following is an example of the governmental regulation of consumer transactions? ____________________
   a. The licensing of an electrician
   b. Automobile equipment safety standards
   c. The "truth-in-lending" law

Developed by Richard W. Laugesen.

d. Driver's licensing
e. Consumer Protection Act
f. Uniform Consumer Credit Code
g. "No fault" insurance laws
h. All of the above

8. List three kinds of agencies from which you can obtain information about a product or service.

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9. List three agencies to which you can curn if you feel you have been victimized by a supplier of goods or services.

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10. List four kinds of tactics advertisers use to persuade people to buy products.

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CONSUMER LAW: WHAT IS A CONTRACT?

Introduction

Introduce the lesson by asking the following questions:

--Has any of you ever bought something from a friend?

--What do you do when you want to buy something and don't have enough money?

--Has anyone in your family ever been in the hospital?

--Does anyone know how much it costs to be in the hospital?

Distribute copies of Handout 60, "Matt and Frank," and allow time for students to read it. (For younger elementary students you may want to read the handout aloud to the class.)

Discussion

If necessary, clarify the circumstances, terms, and characters in the case. The following questions should help determine how individual students respond to the dilemma presented in this case:

--Who knows what a contract is? Explain.

--Can someone tell us what is going on in this case?

--What should Matt do with his $100 during the next six months?

--Does it make any difference that Matt's contract was with a friend instead of with a car dealer or a lawyer?

Be sure to give as many students as possible a chance to respond to the initiating questions so you can determine whether they have different viewpoints about the story.

You might want to set up small groups of three or four students each and let them role-play the case. Give roles to as many students as possible (for example, Matt, Frank, Matt's dad, Matt's mom).

Another option would be to set up small groups of three or four students each and give them the following instructions:

--List two or three things which you think Matt *should* do because of this problem, and explain why.

--List two or three things which you think Matt *should not* do, and explain why.

Note that small-group activities should always be followed by discussions which focus on what happened in the small groups.

Lesson plan developed by Faith Haber Galbraith.

Probe Questions

The following questions should help to encourage students to talk to each other about the dilemma. Use them whenever you feel that they will help to promote student interaction or focus upon some important aspect of the dilemma story. It is not necessary to use them all.

--If Frank could get the money he needed for his Volkswagen payments from someone else for the next six months, would that make it okay for Matt to break his promise?

--Would it make any difference if Matt and Frank were not friends?

--What do you think might happen to Frank if he can't make his car payments because he didn't get the $100 per month from Matt?

--If this case would be taken to court, what do you think would be a fair solution for Matt and Frank?

Extension Activities

1. Develop a mock trial around the story of Matt and Frank. List three community resource people that might participate in such a program. Invite them to be part of your trial, both in the planning phase and in the simulation phase.

2. As a class project, have the students develop a collection of different types of contracts. Assist them in developing both a list of different contracts as well as the names of places where they can call and/or write for examples. Newspapers and magazines are good resources for this activity.

3. Read one or both of the following two stories to the class and ask students what the people in each of these stories should do:

Story 1

Mrs. Jones bought a used color TV. She signed a contract for it, left a deposit, and promised to pay the balance of the price upon delivery. The salesperson said the TV would be delivered in good condition the next day. The TV was delivered the next day, but it was not in good condition. Two of the knobs were missing. Mrs. Jones refused to pay the balance. She felt the dealer had broken the contract. What should Mrs. Jones do? How would you judge this case?

Story 2

Mr. Wood borrowed $1,000 from the Friendly Loan Company. One month he was ill, and paid nothing. Three days later, the company began to harass and threaten him. Calls were made to his employer, neighbors, co-workers, and friends, saying that Mr. Wood was not honest. He tried to explain his situation. It was no use. Finally he lost his job. What should Mr. Wood do? How would you judge this case?

PROPERTY LAW

Property law, and in particular landlord/tenant law, should be of interest to most students. It is probable that a majority of the students in any given classroom are either living with their parents in rental property or will themselves be renters at some time during their lives. Ghetto students may be primarily concerned with housing conditions in the slums; adult students living in apartments may be personally concerned about fixtures they attach to the premises; students whose parents own rental property may be especially interested in the rights and duties of landlords.

Although the laws controlling landlord and tenant problems are derived from the law of real property, the modern trend is to move away from real-property concepts and instead use the theories of torts and contracts when property laws do not provide solutions for problems. Thus, to fully acquaint students with landlord/tenant concepts, a fundamental understanding of real property, torts, contracts, and constitutional law should be provided. So that students can appreciate how different areas of the law are related to each other, landlord/tenant content should be presented toward the end of the unit. Students should be encouraged to apply the rules learned in studying torts, contracts, and constitutional law to landlord/tenant problems.

Handout 61, "Landlord and Tenant," contains basic information and definitions of key terms. The activity entitled "Landlord/Tenant: Who Is Responsible?" is appropriate for high-school students. "Two Hunters; One Deer," which deals with conflicts over property in general, can be used to introduce some basic concepts about property to elementary students.

Based in part on "High School Legal Education" *(Golden Gate University Law Review* 2, no. 1 [Winter 1972]), pp. 299-314. Used with permission.

Handout 60

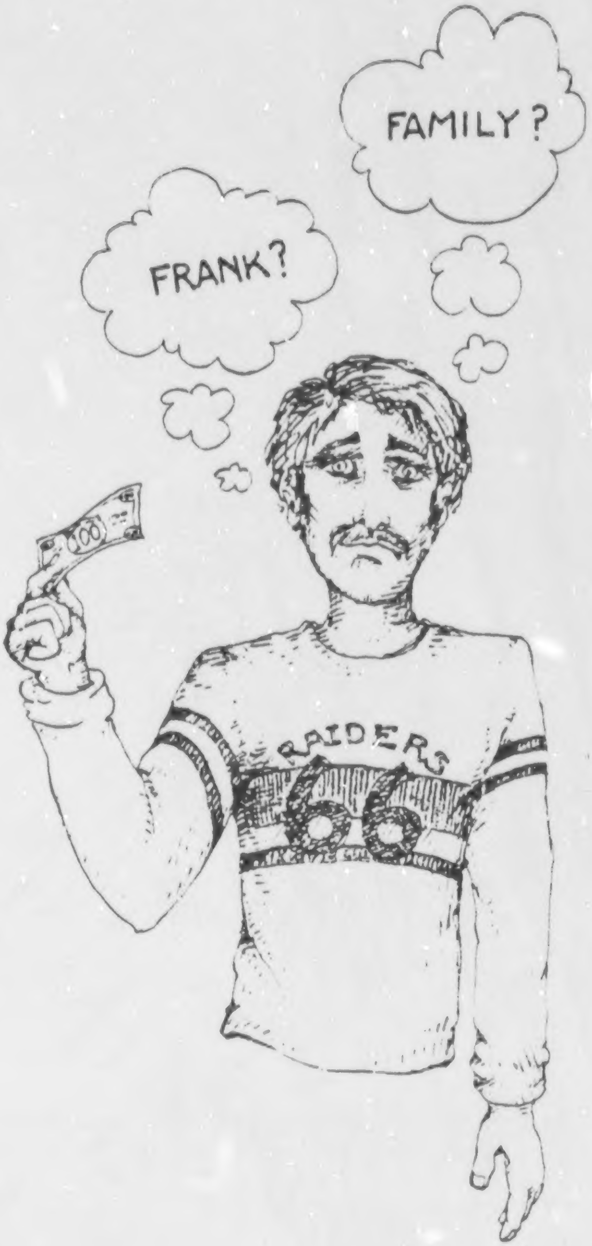
MATT AND FRANK

Frank wanted to sell his old Chevy so that he could buy a brand new Volkswagen. He decided to sell it himself instead of trading it in on a new car. Frank's good friend, Matt, said he would buy Frank's old Chevy. They wrote out a contract to cover the purchase which said:

"I, Matt Hughes, agree to buy Frank Olson's Chevy for $800 to be paid in monthly payments of $100 for 8 months."

Frank did not charge Matt any interest (extra money) on the money that he was "paying on time," because they were friends. They each kept a copy of the contract that they had signed and that their fathers had witnessed.

Frank paid the down payment on the Volkswagen and started driving around town in it. He planned to use the payments he received from Matt to help pay his car payments. Matt paid Frank for the first two months. Then Matt's Dad got hurt and the doctor said he would have to stay home from work for 6 months. Matt's family could not pay the medical bills without help. Matt's mother told Matt that she really needed the $100 he made every month at his part-time job to help out the family.



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Handout 61

LANDLORD AND TENANT

The fundamental principles of landlord/tenant law can perhaps be best understood by reading the following account of a hypothetical situation:

> Mrs. Jones, a widow with one school-age child, is looking for an apartment. She sees an apartment she likes and decides to rent it from Mr. Smith, the owner. They discuss such matters as how much the rent is; what comes with the apartment (e.g., a stove, a refrigerator, a dining-room table); how long Mrs. Jones intends to stay; whether the landlord pays for the gas, electricity, and water; and who besides Mrs. Jones will be living in the apartment. If Mrs. Jones is satisfied with the apartment and the rent she will have to pay, and if Mr. Smith feels that Mrs. Jones will pay the rent on time and keep the apartment clean with minimal damage, then they enter into a *rental arrangement*. When Mrs. Jones rents the apartment, she becomes the *tenant*, and Mr. Smith becomes the *landlord*. The legal agreement between the two parties is called a *lease*.

Any relationship between the owner of a building and a tenant involves basic contractual obligations and rights. The *lease*, which is a contract between the parties, spells out the legally binding duties and rights of both parties. This contract gives the tenant the right of temporary possession and control of the landlord's property; in return, the tenant must pay rent to the landlord.

Leases may be either oral or written. Most states have statutes that require contracts to be in writing if they involve time periods of a year or more. Therefore, an oral lease for a year or more will not be enforced by the courts and will not adequately protect the rights of the parties. As a general rule, a lease for a year or more should be in writing.

Most leases fix the period of time for which the *tenancy*, or landlord relationship, is to endure. Whenever there is no specific date mentioned in the lease, and either party has the right to terminate the tenancy at any time, the contract is called a *tenancy at will*. Under this type of lease, the landlord can end the agreement merely by asking the tenant to vacate so that the landlord can repossess the premises, or the tenant can end the lease by vacating the premises.

Adapted with permission from "High School Legal Education" (*Golden Gate University Law Review* 2, no. 1 [Winter 1972]), pp. 299-314.

> If Mrs. Jones for some reason wishes to leave the apartment she has rented, she can move out at any time and Mr. Smith cannot require her to stay or pay rent after she has left.

When there is no specific date of termination in the lease, but the parties do not have a right to terminate at will, the lease is called a *periodic tenancy*. The period may be month to month, week to week, or year to year. In order to terminate the lease, either party must ordinarily give notice equal to the rental period. However, many states--among them California--require no more than one month's notice even for leases longer than one month.

> Assume that Mrs. Jones enters into a written lease with Mr. Smith which does not have a termination date but requires that either party give notice one month prior to vacating or requiring the tenant to vacate. A *periodic tenancy* is created.

If the lease entered into by the *lessor* and *lessee* (landlord and tenant) has a specific termination date, then the lease is called a *tenancy for years*.

> If on August 15 Mrs. Jones signs a lease that will terminate automatically on June 1 of the following year, neither party is required to give notice, and the tenant must vacate by that date.

If the tenant does not move out of the apartment by the termination date and the landlord does not sue to have the tenant evicted, the landlord has the option of treating the tenant as a *holdover tenant*. In many states, this means that the landlord may interpret the tenant's actions as an agreement to rent the apartment for another identical period. However, other states' laws provide that the lease remains in effect on a month-to-month basis even though the original lease was for a longer period.

Some states, such as California, have abolished tenancies at will for all intents and purposes; they require that notice be given to the other party in all situations except under a tenancy-for-years lease. Neither party has to have a specific reason for giving notice; the tenant can give notice to terminate the lease simply because he or she no longer wishes to live there, and the landlord can give the tenant notice to vacate merely because he or she wants to rent to another person. This requirement of notice allows the other party to prepare for the vacation of the premises.

Questions for Discussion

1. What is a *tenancy at will?* What are the advantages and disadvantages of this type of rental arrangement?

2. What is a *periodic tenancy?* When would you think this rental agreement generally is used?

3. What is a *tenancy for years?*

4. What is a *lease?*

5. Why should the *notice of termination* of the lease help the landlord?

6. Why should some leases be in writing?

There are certain advantages of one type of agreement over others. Naturally, a landlord seeks an agreement with the tenant that best suits his or her interests. The bargaining power of the respective parties varies greatly and usually favors the landlord. In the typical situation today, with a shortage of apartments, most landlords are assured of renting their properties and they can carefully select their tenants. They can impose conditions upon tenants that would be unacceptable if the two parties were in more-equal bargaining positions.

> The lease that Mrs. Jones entered into with Mr. Smith provided that she could not have any pets in the apartment, nor a phonograph. Mrs. Jones, upon signing the lease, had no intention of keeping a pet, but she did enjoy listening to the records that her husband had given her prior to his death. She felt that restrictions against having a phonograph were unfair and unreasonable. However, because she wanted an apartment near the beach so her son Dale could swim and because there were no other apartments available in that vicinity, she had to agree to the conditions. Had there been several vacant apartments within the same area, the landlord may not have insisted that she comply with his conditions. If she rented another apartment from another landlord, Mr. Smith's apartment would remain vacant until he found another renter, and that could take days or weeks.

If a landlord has an apartment building in an area where rents must be low in order to attract tenants and thus finds it hard to make a profit on his investment, he might put few conditions in his leases to ensure continuous occupancy of the building. If the apartment building is in an area where apartments are in great demand, the landlord will be able to charge higher rents and put more conditions into leases and still keep the building fully occupied. Frequently, a landlord who has no difficulty renting desires a month-to-month tenancy so that he can raise rents or acquire new tenants to ensure payment of the higher rents.

> Mr. Smith's apartment building is in a fashionable beach resort area. He knows that he can rent the apartments easily during the summer months even at exorbitant rates. However, during the remainder of the year it is much more difficult to find tenants. Mr. Smith is in a greater bargaining position during the summer months. Therefore, he rents apartments for a maximum of nine months at a reasonable rate of $200 per month. If the tenant rents an apartment after September, the lease period diminishes because

> all leases expire in June at the beginning of the busy summer months. Mrs. Jones must move out by that date or pay a higher rate for the three summer months. During the lucrative summer period, the rental rate for the same apartment may be as much as $300 per week. It is easy for the landlord to rent the apartment during the summer, week by week, because there is a large demand for beach apartments during that time. The nine-month lease, although inconvenient for Mrs. Jones, is better than nothing at all.

Questions for Discussion

1. What type of conditions do you think a landlord generally wants in a lease?

2. Do you think that a landlord should be able to select the tenants he or she wants to occupy an apartment, or should any person be able to rent it?

3. Do you think Mrs. Jones's landlord should be allowed to charge such high rates during the summer months?

Once the parties have entered into the rental agreement, the rights and duties of each come into existence. In many instances, the duties of the landlord and those of the tenant are *implied*--i.e., not expressly written into the lease. Nevertheless, courts recognize their existence and require that parties follow them, and, if necessary, they will enforce the conditions.

In earlier times, landlords had few if any duties imposed on them by law. Generally the courts ruled that they had to allow tenants to enter and occupy the premises, but beyond this they were required to do nothing else. Although that is still the case in many states, other states require a landlord to deliver the premises in a *tenantable condition*.

There is an implied duty in every lease that the landlord will protect the tenant's *quiet enjoyment* of the premises. Although this sounds as if the landlord must ensure that the tenant is comfortable and is enjoying the apartment, the courts have interpreted *quiet enjoyment* to mean that the landlord cannot commit any act that would justify the tenant's abandoning the premises.

> Mrs. Jones's apartment is located below another apartment occupied by six overweight teenagers. These young people continually jump up and down, claiming to be doing the latest dance.

Mrs. Jones cannot allege that Mr. Smith has breached his duty to protect her quiet enjoyment of the premises unless the teenagers are his children. If the teenagers were his, Mrs. Jones could treat the noise as a *breach* of the implied *covenant of quiet enjoyment* that results in a *constructive eviction*. That means that Mrs. Jones has the right to vacate the premises without paying any further rent and without being liable to Mr. Smith for breach of the lease. If the teenagers are not his, Mr. Smith has no duty to keep them quiet. If Mrs. Jones vacates the premises, Mr. Smith could sue her for breach of the lease.

Questions for Discussion

1. If a landlord's radio bothers the tenants living below, are the tenants justified in abandoning the premises?

2. How much noise can a landlord make before his or her acts will justify the tenants' abandoning the premises?

3. What is the meaning of the term *constructive eviction?*

4. What things might a landlord do that could result in a constructive eviction?

5. Since the law does not require a landlord to quiet "dancing" teenagers, what do tenants usually do to stop the noise?

6. Do you think the police might aid Mrs. Jones in stopping the teenagers from dancing? How much noise would they have to make before the police would intervene?

Another implied duty (in some states codified into law) that a landlord owes to a tenant is to make necessary repairs to the property during the period of tenancy. This obligation does not cover such minor repairs as a leaky faucet, but only major ones that require extensive work or add to the value of the building.

Tenants, on the other hand, have traditionally had an implied duty to make minor repairs, a responsibility that arose out of their obligation not to commit waste. This duty has required that tenants make repairs in order to preserve property in substantially the same condition as it was in at the beginning of the lease period. This rule was probably quite fair years ago when the majority of tenants lived and worked on leased farms; today, however, now that the majority of tenants live in cities, tenants are not expected to make all minor repairs. Thus, today the courts impose a lesser burden upon the tenant to make repairs than was the case only a few years ago. There are no guidelines for determining whether a particular defect is major or minor or whether the landlord or the tenant should make the repairs.

> After two months in her apartment, the light switch in Mrs. Jones's living room ceases to work.

Light switches are usually inexpensive to replace and can be expected to wear out through continuous use. In this case the tenant, not the landlord, must repair the switch. Although they are not required to do so by law, many landlords make such repairs or agree to pay for supplies. However, if after the switch is repaired the lights still do not work and it is learned that an electrical wire is broken, the landlord would be responsible for repairing the wire.

Questions for Discussion

1. What kinds of repairs should a tenant make?

2. Should the landlord repair the faulty light switch? Would the result be different if the light failed to work the day after Mrs. Jones moved into the apartment?

The law also imposes duties on the tenant. A tenant must pay rent to the landlord for the possession of the premises regardless of the absence of any express provision in the rental agreement. The amount of rent required, when not specified in a lease, is referred to as a *reasonable amount*. If the tenant fails to pay rent, the landlord may either sue for the reasonable rental value or have the tenant evicted. Eviction is a legal process; the landlord cannot personally evict a tenant or remove his belongings from an apartment. Only the sheriff can conduct an eviction, and only then after a court order.

> Mrs. Jones, having paid her rent for the first two months, does not pay her third month's rent on the date it is due. When Mr. Smith asks her when she will be able to pay, she replies that she does not know. Mr. Smith then gives her a written notice requiring her to pay her rent or leave the premises. After waiting the length of time required by statute (in California it is three days), the landlord files a complaint against Mrs. Jones at the county courthouse. If Mrs. Jones has not vacated the premises by the date of the trial, which is set on filing the complaint, then she must have some reason for not paying Mr. Smith the rent. If there is no legal excuse for not paying the rent, a *judgement* will be entered against Mrs. Jones and the sheriff will be ordered to evict her. After eviction, Mrs. Jones is still liable for the past rent owed Mr. Smith. The amount owed is based on the number of days she occupied the premises. The legal eviction will not excuse the past rent; it will only put Mrs. Jones out of possession.

As previously mentioned, the tenant has a duty to make minor repairs that stems from the duty not to commit waste. This duty means that the tenant cannot destroy property and cannot make changes to structures on the property without the landlord's permission. The tenant must return the property to the landlord at the termination of the lease period in the same condition in which it was at the beginning of the lease, minus normal wear and tear.

> Mrs. Jones has found that many people who come to the beach to swim want to try surfing. No one in the area rents surfboards, so Mrs. Jones uses her apartment garage to store and rent surfboards. The surfboards are stored on racks that Mrs. Jones has had built and fastened to the wall.

Since she has changed the use of the leased property, the landlord has the right to stop Mrs. Jones from using the garage to store and rent surfboards. Not only can the landlord stop her from using the garage as a store, her remodeling and new use of the garage can be treated as a breach of the *implied duty not to commit waste*--a valid reason to evict Mrs. Jones.

If the apartment that Mrs. Jones leased had six small rooms, and she needed only five but wished the rooms were larger, she could not, without Mr. Smith's permission, knock out one of the walls in order to convert two small rooms into one large room. This would be considered *waste* even though the construction job would cost Mrs. Jones a considerable amount of money, would make the apartment more pleasant, and would increase the value of the apartment.

Questions for Discussion

1. If Mrs. Jones used the garage to store some of her belongings, would she be committing waste?

2. How many "improvements" can a tenant make before committing waste?

One problem that still faces tenants in many jurisdictions today is that of *caveat emptor,* which means "let the buyer beware" or "take it as you find it." For the tenant, this requires that after taking possession of the premises he or she cannot complain that it is dirty or that something needs repairs. By renting the apartment, the tenant has implicitly accepted it as it was; the landlord has the duty only to make subsequent major repairs.

Many states, however, have changed this law; they are now requiring that the landlord make all repairs necessary in order to make the premises habitable before the tenant moves in and to continue to make necessary repairs to ensure continued habitability. In California, a tenant may use up to one month's rent to make a repair which the landlord has a duty to make but has failed to make, and may deduct the amount of the repair from the rent owed the landlord.

The legal problem of *fixtures* faces the tenant when he moves out of the premises.

> Mrs. Jones's lease has terminated, and she must move out. She packs her belongings and asks Mr. Smith to help remove the medicine cabinet that she embedded into the wall when she first moved into the apartment. Mr. Smith tells her that to remove the cabinet would damage the wall, and that even though Mrs. Jones has paid for the cabinet she must leave it there because it is now part of the apartment.

Many tenants discover too late that personal property which they purchased for their own use and attached to the real property becomes a part of the real property and must remain with the premises once they vacate them. Any personal property that becomes real property is called a *fixture*. Today, tenants are allowed to remove a variety of items as long as the removal does not substantially damage the real property. In this particular situation, one must determine whether or not the removal of the medicine cabinet would substantially damage the wall. If the repair cost is minimal, Mrs. Jones can remove the cabinet and make the repairs. Otherwise, she will have to leave it in the apartment, as it has become a fixture.

Questions for Discussion

1. If a tenant has fastened a pole lamp to the wall, would he or she be able to take it on vacating the premises?

2. If the tenant has laid wall-to-wall carpeting in an apartment, is that considered a fixture?

Read about the following hypothetical situation and answer the questions that follow.

> Mrs. Thomas stopped in front of the rental agency and quickly reread the newspaper ad that she brought with her. The ad described a "four-room apartment, near schools and a shopping center, third floor, available Sept. 1, $125 per month."
>
> Mrs. Thomas was very anxious to rent an apartment, and she hoped she could see the advertised apartment and arrange all the details as quickly as possible. She entered the agency and talked to Mr. Hunter, a rental agent, about the apartment. Mr. Hunter took Mrs. Thomas to another apartment in the same building as the one advertised. He explained that the apartment advertised in the paper was not available for inspection since the occupants were sick. Instead, he offered to show her the apartment directly below it on the second floor and assured her that it was exactly the same as the one listed in the paper. Mrs. Thomas agreed to look at it since this would give her an idea of the size of the rooms, etc. She liked the apartment. It was clean and cheerful and appeared to satisfy her family's needs. That evening, she and her husband went to the rental office, signed the lease, and gave Mr. Hunter the first month's rent.
>
> On the first of the month, when the Thomases arrived at their new apartment, they were shocked by its condition. Even though the floor plan was the same as that of the apartment the agent has shown Mrs. Thomas, the rooms were filthy, the paint was peeling, the plaster was falling, and several windows were broken.

> Naturally, Mrs. Thomas was extremely angry. She told the agent, Mr. Hunter, that she intended to move out as soon as she could find a decent place. Mr. Hunter explained to her that, since she had entered into a lease, she would be liable for the monthly rental price until he could find someone else to rent the apartment.

Summary Questions

1. What is a lease?

2. What are the duties of a landlord?

3. What are the duties of a tenant?

4. Did Mrs. Thomas rent the apartment that she moved into? (Explain your answer fully.)

5. Define the following terms:

   a. landlord
   b. tenant
   c. rent
   d. lease

6. Explain the duties of:

   a. the landlord
   b. the tenant

7. What are the advantages and disadvantages of a lease for both landlord and tenant?

8. What is the difference between a *tenancy for years* and a *tenancy at will?*

9. Why is the national housing shortage particularly hard on the poor?

10. How would the implied duty of *quiet enjoyment* in any rental agreement apply to a situation like the following:

    > Tenant A has a rock band. Because he is a full-time student, he can only practice at night. Tenant B is a light sleeper and is constantly disturbed by A's music. What can be done to accommodate both A and B?

11. You, a tenant, have asked your landlord several times for extra cabinets in the kitchen. He agrees that you need them, but has never installed them. You finally do it yourself. When you move, can you take these cabinets with you? Explain.

Conclusion

Landlord/tenant law has deep historical roots; many of today's landlord/tenant laws were formulated as early as the 11th century. At that time, society revolved around landowners, and serfs had few legal rights. The landlords made laws that naturally favored the landlords' positions. Modern courts still seem to favor the landlord, but several state legislatures, among them California's, are enacting laws that strengthen the tenant's position.

LANDLORD/TENANT: WHO IS RESPONSIBLE?

This activity focuses on the question of who is responsible for the hazardous and unsanitary conditions that plague many rental properties. Handout 62, "Please, Mr. Healy!," presents a hypothetical case involving a dispute over repairs and rent. In using this activity, students should be aware of the varying duties and responsibilities of landlords and tenants and discuss the controversy from both standpoints.

It is important for students to understand that the duties and responsibilities of both tenant and landlord are spelled out in the *lease*. The major duties of the tenant are to pay rent on time and to take reasonable care of the property. The major duties of the landlord are to make major repairs on the property and to ensure that the tenant has a reasonably quiet place to live. Students should also be aware that when a tenant does not fulfill his or her obligations, the landlord can sue for the rent money or have the tenant evicted from the property. Use of *eviction proceedings* is one of the landlord's prime weapons. Since many tenants find it too costly to take their complaints to court, they may choose to move rather than get involved in court action.

The hypothetical case in this handout can easily be used for a role-play activity (see pages 111-121) or a mock trial (see pages 47-49). The first set of questions in the handout can form the basis for a class discussion; the second set can be treated in discussion or in a values-continuum activity (see page 81).

Adapted with permission from *In Search of Justice,* teacher's edition, by the Law in American Society Foundation (Columbus, Ohio: Charles E. Merrill, 1975), p. 43.

Handout 62

PLEASE, MR. HEALY!

When Alice and Mitzi graduated from college in June, they got jobs as social workers in a big city. Neither of them were making much money. Therefore, they were careful about how they spent their earnings. When they started looking for an apartment, they were shocked at the filth and poor condition of the places they could afford.

After weeks of looking, the girls finally found a fairly nice apartment in their price range. There were a few problems, however. The refrigerator did not work properly, and the hot water faucet in the bathroom was broken. There were only two electrical outlets, which would probably mean constant trips to the fuse box in the basement.

The girls pointed these things out to Mr. Healy the landlord. He promised to have everything fixed by the time they moved in. He seemed like a nice man, and the girls trusted that he would get everything done. They really liked the apartment and the fact that they would not be tied down by a lease. They gave Mr. Healy a month's rent in advance and made arrangements to move into the apartment two weeks later.

After two months, the girls had no hot water and the refrigerator had completely stopped working. If they ran more than one electrical device at a time, they blew a fuse. Mr. Healy refused to listen to their complaints. He told them that, for the low rent they were paying, they should not complain. He also said that they could move out if they did not like the apartment.

1. What are the rights of the tenants in this situation? ____________________

____

____

2. What are the landlord's responsibilities? ____________________

____

____

3. Is there any way that Mitzi and Alice can make Mr. Healy meet his obligations?

If so, what? If not, what can they do? ____________________

____

____

Reprinted with permission from *In Search of Justice*, by the Law in American Society Foundation (Columbus, Ohio: Charles E. Merrill, 1975).

4. Did the girls fail in any way to meet their obligations as tenants? If so, how? If not, what can they do? ____

____

The lists below give some things for which landlords and tenants may be responsible. For each, list the items in order from those you think are most important to those you think are least important. Then state your reasons.

Landlords must:

- A keep the lawn and bushes neatly trimmed.
- B repair the stove and refrigerator furnished with the apartment.
- C provide paint and materials when a tenant wants to change the color of a room.
- D make needed repairs to the outside of the building.
- E clean the apartment and repaint the walls before new tenants move in.
- F keep the apartment free of insects, mice, and other pests.

Code Letter	**Reason**
________	____
________	____
________	____
________	____
________	____
________	____

Tenants must:

- A report any damage or needed repairs to the landlord immediately.
- B not disturb other tenants with noisy parties or loud music.
- C pay the rent as required by the lease.
- D not wash cars or leave the water running for long periods of time if the landlord pays the water bill.
- E keep the walls and floors in good condition.
- F provide drapes or window shades in the apartment.

Code Letter	Reason
______	________________________________
______	________________________________
______	________________________________
______	________________________________
______	________________________________
______	________________________________

TWO HUNTERS; ONE DEER

This activity is designed to help elementary students consider alternatives for resolving conflicts over property.

* * * * * * * * * * * * *

Objectives

After role-playing *Two Hunters; One Deer*, students should be able to:

1. Identify the conflict in this situation and describe similar conflicts.
2. Describe the role of judge as an arbitrator who resolves disputes between individuals.

The following situation is a hypothetical one based on an actual case. Read the story aloud to the students to the point where the directions indicate a stop.

The time was late autumn, perfect for hunting. Ernie had been looking forward to the opening of the hunting season. Of course, he always looked forward to it, because he had managed to bag one deer every year for the past fifteen years. That was an unheard of record in deer hunting. It was unfortunate that a licence allowed one to shoot only one deer. This year, Ernie would shoot his sixteenth deer. It would be fun, too, because he was taking his friend Hector along with him. Hector had never been hunting, but he was just as excited and optimistic as Ernie about getting a deer. They had been talking for weeks about their trip.

Finally, the big day arrived. Ernie and Hector left early in the morning and planned to be gone for two or three days. Unfortunately, the trip ended in the middle of the second day, and so did the friendship between Ernie and Hector. Here's what happened.

As the two men began to stalk through the woods, they stayed together so that Ernie could teach Hector how to track a deer. They didn't have any luck on the first day, but they enjoyed themselves anyway. On the second day, Ernie told Hector that they should separate so they could cover more territory. Several hours passed before either of them saw anything worth shooting. Then they each spotted a deer. Neither of the men knew it was the same deer when they pulled the triggers of their guns. The shots were so close together that it wasn't possible to tell which man shot first, but the deer was dead. The two men began arguing about who had actually killed the animal and who owned it.

Stop here.

Reprinted with permission from *The Methods Book: Strategies for Law-Focused Education,* by Arlene F. Gallagher (Chicago: Law in American Society Foundation, 1978), pp. 51-53.

Instructions to the Teacher

Group students into pairs. One person in each pair will play Ernie, and the other will play Hector. Allow a few minutes for the pairs to try to resolve the conflict through role-playing.

Follow this role-playing with a brief discussion. Begin by asking if anyone has resolved the problem. If someone has, he or she should explain the solutions to the class.

Tell the class that in this story Ernie and Hector were not able to come to a decision that was agreeable to both.

Continue reading.

Ernie and Hector got so angry with each other while they were arguing that they finally realized they wouldn't be able to agree to anything. They decided to pack up the deer and go home. Since they were barely speaking to each other, they figured hunting together wouldn't be fun any more. On the way home, they did think of a way to solve their problem. They agreed to go to the judge in town and to go along with whatever he decided.

When the two men arrived in court, they were still angry. When the judge heard both sides of the story, what do you think he did?

Stop here.

The following role-playing will be done by those students who could not come to an agreement. Select several students to act as judges. Role-play with groups of three. Conduct a brief discussion about the resolutions of the judges. Be sure to have the judges explain why they decided the way they did. This is an important part of decision-making development. Students should be able to think through and analyze why one particular decision was fairer than another.

Continue reading.

A Similar Conflict

Long ago, when the Plains Indians hunted buffalo, each man had no difficulty identifying his own kill. Each hunter fletched his arrows with his own particular color and pattern of feathers, and since each hunter's arrows were unique, it was easy to determine who had killed an animal. If several different kinds of arrows were found in the same buffalo, ownership was decided by the position of the arrows. When more than one hunter had inflicted a mortal wound, there were two alternatives: Either the buffalo was divided between the two hunters, or it was given to a widow's family.

Later, hunters began to use firearms, which made identification of ownership impossible and eventually led to the communal division of buffalo.

Stop here.

Discussion

1. Do any of the Indian ways of resolving conflicts help you in determining what to do about the deer shot by Ernie and Hector?
2. Should it make a difference that Ernie had already shot fifteen deer and Hector had never shot one? Why or why not?

Continue reading.

The Decision

In this case, the judge could not determine which bullet had actually killed the deer, so she told the two hunters they could each have half a deer or nothing. She refused to award the whole deer to anyone. Both men refused the offer of half a deer. Each reasoned that if he accepted half a deer, it would use up his hunting license for that season, and there would be no chance of getting a whole deer until next year.

In this case, the judge made the deer the property of the court. But the judge said that it wasn't right for the court to keep the deer either, so she gave it to a boy's camp. The boys ate a lot of venison that year, and they had the deer's head mounted in the recreation room. The story about the two hunters is told over and over again to the new boys who come to the school.

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ENVIRONMENTAL LAW

During the 1970s, environmental law began to have a profound impact on almost every aspect of life in this country. Whereas at one time few if any restrictions were placed on the rights of landowners to do as they pleased with their property, today both public and private "landlords" must conform to myriad regulations imposed by various levels of government--regulations designed to ensure that the use of any property does not adversely affect the quality of human and other forms of life.

Two activities focused on environmental law are presented here: one for junior-high and senior-high students, the other for younger children. Both activities lend themselves particularly well to a simulation format. (Additional suggestions for using simulations and mock trials are presented on pages 47-49.)

THERMAL POLLUTION: A MOCK TRIAL

This activity presents background information and guidelines for using a mock trial to help older students and adults consider some issues related to environmental law. Handout 63 contains information sheets that can be duplicated and supplied to participants.

* * * * * * * * * * * *

UPDATED MONTHLY and available in most larger libraries, the *Environmental Law Reporter* is a rich resource for teachers who wish to develop mock trial scenarios in environmental law. The summaries are concise yet detailed enough to provide all the necessary ingredients: the background to the case, the positions of the plaintiff and the defendant, and the court's decision.

Recently, the *Environmental Law Reporter* summarized an unusual case. It involved "thermal pollution" resulting from the introduction of cold water into an artificially-warmed tidewater stream in New Jersey. The case, *Department of Environmental Protection v. Jersey Central Power and Light Company*, No. A-218-73 (Superior Ct. N.J. App. Div., March 21, 1975), might be roughly summarized as follows:

Jersey Central Power and Light operates a nuclear-powered electrical generating plant located between the Forked River and Oyster Creek, a tidewater stream emptying into the Atlantic. A canal carries water from the Forked River to the plant. At that point, pumps force the cold river water beneath the plant, where it passes around condensers located underneath the nuclear reactors. This water, acting to cool and condense the steam created by the reactors, becomes heated some twenty-five degrees in the process. The heated water is then pumped into a canal that empties into Oyster Creek.

The artificially-warmed water of Oyster Creek attracts thousands of menhaden, a commercially important fish.

On January 28, 1972, the Jersey Central Power and Light plant shut down its nuclear reactors. But pumps continued to force the water from Forked River into Oyster Creek. The sudden infusion of cold water from the Forked River dropped the water temperature in Oyster Creek approximately 13 degrees in 24 hours.

Shortly thereafter, upwards of half a million menhaden were found dead in Oyster Creek. Death was attributed to the thermal shock caused by the sudden drop in water temperature. The New Jersey Department of Environmental Protection brought suit against the Jersey Power and Light Company, claiming violation of N.J.S.A. 23: 5–28.

This statute, in part, states: "No person shall put or place into . . . any of the fresh or tidal waters of this state any petroleum products, debris, hazardous, deleterious, destructive or poisonous substances of any kind. . . . In case of pollution of said waters by any substances injurious to fish, birds, or mammals, it shall not be necessary to show that the substances have actually caused the death of any of these organisms. . . ."

With these basics in mind, the teacher is able to prepare the class for a mock trial. Background sheets will need to be prepared for (1) the plaintiff and plaintiff's attorney, (2) the defendant and defendant's attorney, (3) a witness for the plaintiff, and (4) a witness for the defendant. These papers should be kept brief, but detailed enough to provide crucial information and a clear controversy. Examples of how such background papers might be presented are found on the following pages.

Reprinted with permission from "Thermal Pollution: Background Material for a Mock Trial," by David G. Armstrong (*Law in American Society Journal* 6, no. 2, pp. 27-30; a publication of the Law in American Society Foundation).

The Simulated Trial

Once the information sheets for these key individuals are prepared, the teacher must make a decision about the total number of players who will be involved in the mock trial. Surely a judge, plaintiff, defendant, plaintiff's attorney, and defendant's attorney will be needed. The descriptions also provide for a plaintiff's witness and for a defendant's witness. Beyond these basics, the teacher is free to expand the scope of the scenario to include additional witnesses, some of whom can supply scientific testimony regarding tidewater ecosystems, the operation of nuclear reactors, and the laws of thermodynamics. Perhaps other roles, such as a bailiff, a clerk of the court, and a court reporter, might also be useful.

The actual flow of the "trial" will vary according to the particular protocols favored by the teacher. The emphasis in this exercise is not on a procedural replication of a real trial, but, rather, on a careful examination of contending views centering on an important issue. The structure of the trial ought to provide for the airing of opposing views, the introduction of supporting evidence, and time for the judge(s) to reach a decision. (Remember, this is an appellate court simulation.)

Debriefing

Once the mock trial has run its course, the stage is set for the debriefing session. Debriefing permits participants to drop out of their roles and look objectively at the development of the two adversarial positions. The teacher needs to guide debriefing with key questions such as:

1. What basic issue was in dispute?
2. What position was taken by the plaintiff?
3. What evidence supported the plaintiff's view?
4. What position was taken by the defendant?
5. What evidence supported the defendant's case?
6. What did the plaintiff's attorney do to present the plaintiff's evidence in the best light and to raise questions about the defendant's evidence?
7. What did the defendant's attorney do to present the defendant's evidence in the best light and to raise questions about the plaintiff's evidence?
8. (To the Judge) Tell us the line of thinking you used in arriving at your decision. What would it have taken for you to change your mind?

Capstone Activity

After the debriefing session, you can compare the outcome of the mock trial with the outcome of the real case upon which it was based. In the actual case, the New Jersey Court of Appeals

1. found the company to be in violation of the statute. A $6,000 fine imposed by a lower court was upheld, as was an award to the State of $935 in compensatory damages (to pay for the fish that were killed);

2. rejected company's contention that since the statute in question did not specifically mention thermal pollution, no violation occurred. Court interpreted legislative intent to include any substance that would be "hazardous, deleterious, or poisonous to life";

3. rejected company's claim that "due process" was violated, since sometimes hot or cold water might *not* be a hazard and the company could not know in advance whether its actions would be construed as a violation. Court stated that the company knew heated water had attracted menhaden and that a drop in temperature might be harmful. They also admitted they knew that continuing to run the pumps would result in a sharp drop in the temperature of Oyster Creek; and

4. rejected company's claim that action had resulted from an "unavoidable necessity." Court pointed out that company's own representative had testified that cooling pumps could have been turned off when reactors were shut down.

As a concluding activity, the teacher might wish to ask such questions as:

1. What similarities are there between our decision and the court's?
2. What differences are there between our decision and the court's?
3. How might we account for those differences?

Handout 63

BACKGROUND STATEMENTS FOR THERMAL POLLUTION TRIAL

Background for the Plaintiff

1. Your suit is against Jersey Central Power and Light for violation of N.J.S.A. 23: 5–28. In part, that statute states: "No person shall put or place into . . . any of the fresh or tidal waters of this state any petroleum products, debris, hazardous, deleterious, destructive, or poisonous substances of any kind. . . ."

2. Jersey Central Power and Light operates a nuclear-powered electrical generating plant under a license from the Atomic Energy Commission.

3. The reactors in that plant are cooled by cold water brought from the Forked River. This cold water is pumped around condensers, then out again into an exit canal flowing into Oyster Creek. The circulating water is heated in the process, and so is Oyster Creek. This heating of Oyster Creek has attracted hundreds of thousands of menhaden, a commercially valuable fish, to swim into Oyster Creek from the Atlantic. It can be shown that all these facts were known to the defendant, who also knew that shutting down the reactors would cause Oyster Creek to cool down rapidly.

4. On January 28, 1972, Jersey Central Power and Light shut down its reactors because of a problem. Pumps continued to carry water from the Forked River to Oyster Creek. The pumps were kept running only as a convenience, not out of necessity: rust and scale are less of a problem when water is kept flowing through the system. Because the water was no longer heated by the reactors, and because the Forked River is naturally cold, the temperature of Oyster Creek dropped 13 degrees in 24 hours.

5. More than 500,000 menhaden were found by state inspectors to have died because of the sudden drop in temperature. You, the Department of Environmental Protection, are suing the Jersey Central Power and Light Company under the authority of N.J.S.A. 23: 5–28 (See No. 1 above).

Background for the Defense

1. You represent the Jersey Central Power and Light Company which, under a provisional operating license from the Atomic Energy Commission, runs a nuclear-powered electrical plant cooled by waters pumped from the Forked River, around condensers underneath the reactors, and into an outflow canal emptying into Oyster Creek (a stream flowing into the Atlantic).

2. When unaccounted-for leakage of radioactively-contaminated water around the reactors reaches a specified level, Atomic Energy Commission Regulations require a shutdown of reactors for inspection. Because of this AEC regulation, reactors were shut down for four days beginning on January 28, 1972.

3. During this shutdown, pumps continued to carry cold Forked River water into Oyster Creek. Since the reactors were shut down, the water did not take on heat from the condensers. As a result, the water returned to its normal ambient temperature, which is quite cold. This meant the temperature of the water in Oyster Creek dropped 13 degrees in 24 hours. State inspectors reported that over half a million menhaden—a commercially-important fish—died because of thermal shock.

4. Because of the deaths of the fish, the New Jersey Department of Environmental Protection has sued your company under authority of N.J.S.A. 23: 5–28. That statute, in part, states, "No person shall put or place into . . . any of the fresh or tidal waters . . . of this state any petroleum products, debris, hazardous, deleterious, destructive, or poisonous substances of any kind."

Reprinted with permission from "Thermal Pollution: Background Material for a Mock Trial," by David G. Armstrong (*Law in American Society Journal* 6, no. 2, pp. 27-30; a publication of the Law in American Society Foundation).

Background for State Inspector from Department of Environmental Protection (Witness for the Plaintiff)

1. When nuclear reactors at the Jersey Central Power and Light Company were shut down on January 28, 1972, there occurred massive deaths of menhaden (over half a million) in Oyster Creek.

2. It was apparent that the plant shutdown resulted in a sudden drop in the temperature of Oyster Creek (13 degrees in 24 hours).

3. Investigations of the menhaden carcasses revealed that deaths had not resulted from exposure to poisonous substances. It was concluded that the sudden drop in temperature was the sole cause of death.

Background for Atomic Energy Commission Representative (Witness for the Defendant)

1. The Atomic Energy Commission, as a condition of licensing, places strict operating guidelines on nuclear powered electrical plants, such as the one operated by Jersey Central Power and Light. One of these regulations mandates a shutdown when unaccounted-for coolant leakage around the reactors reaches a specified level. Federal AEC safety regulations take precedence over state statutes.

2. The shutdown of the reactors by Jersey Central Power and Light on January 28, 1972, was consistent with AEC regulations because leakage was approaching the specified level.

3. The shutdown on January 28, 1972, and the subsequent inspections of the facility, could have been accomplished without continuing to pump cold water from the Forked River. But maintenance is greatly simplified if the plant engineers continue to run the pumps when the reactor is not in operation.

PROBLEMS IN GREEN VALLEY

This activity is designed for very young children. After reading the story aloud to the class, the resource person should select ten students to role-play the characters in the story and divide the rest of the class into the three "committees" described in the narrative. Make sure that all three committees interview all or most of the individual characters.

Before the class session, the resource person or teacher should make a larger version of the map of Green Valley on the chalkboard or a sheet of posted newsprint, so that students can refer to it as they listen to the story and role-play the situation.

* * * * * * * * * * *

Grundy Gopher sighed a comfortable sigh and snuggled into his big easy chair. He looked around him at the cupboard he had built in the corner, the round rug on the floor, and his little bed by the fireplace. On the wall were the pictures of his cousins, aunts, and uncles, all smiling at him. Grundy loved his little home. It felt so safe and secure. Most important, it felt comfortable. Everything was just the way he liked it.

Grundy picked up his favorite book and began to look at the pictures. Shortly, he heard a knock. Grundy put down his book and scrambled down the little tunnel that led to his front door. He opened it. At first all he could see was a giant nose. Then Grundy recognized that the nose belonged to his friend, Hannibal Horse. Grundy climbed outside into the sunlight.

"Howdy, Hannibal! What's new?"

Hannibal was slow in answering Grundy.

"Well, Grundy, I have some news for you. Some of us animals have decided to work together to build a new road through our valley so that it won't be so hard to get from one side to the other."

"Oh," said Grundy, "I guess that would be helpful."

"I'm glad you feel that way, because the road is going right over your house. I'm afraid you'll have to move, Grundy."

"What? Over my dead body! Who do you think you are, telling me that I have to leave my home! I've lived here for years!"

Grundy was so mad that he called a meeting of all the animals in the valley to discuss the building of the road. It seemed that everyone was there, and almost everyone had something to say.

Bartholomew Beaver was against the road. "If you build it, you will have to clear away all those trees and bushes--and then what will I use to repair my dam?"

Lesson developed by Susan Davison Archer.

"But Bartholomew," chimed in Clucky Chicken, "a road would make it so much easier for me to get to the library and grain store. As it is now, with my rheumatism, I hardly ever get to go out. It's too hard for an old hen like me to climb over hill and dale. Without a nice easy road to walk on, I'll never get to go anywhere!"

"Yes!" exclaimed Randy Rabbit. "But how am I going to keep all my children off the road? A road can be a dangerous place with a lot of little rabbits playing nearby. They don't always remember to look before hopping!"

"But look at it from my point of view," came the small voice of Artie Ant. "A road would make it possible for me to visit my cousins over on Big Mountain. As it is now, by the time I crawl over that and under this, it takes me a day to get there, and I don't have that much time to spare."

Max the Mountain Goat had something to say, too. "I like being by myself a lot. If we build a road, lots of valley animals, and maybe even strangers, will go traipsing through the middle of our valley. Then hot-dog stands and billboards will go up. And our beautiful valley will become noisy and cluttered. I say no road!"

"I agree," said Snorty Snail. "Besides, it would take me too long to cross the road safely. I'm afraid I'd get squished."

"But if we have a road, when the grass at this end of the valley gets short, I can easily move my whole family to the luscious green pastures on the other side," chimed in Darla Deer.

The other animals started to express their opinions, all at once, until no one could hear anything. Finally Oscar Owl, who had been around a long time, rang a giant gong. This so surprised everyone that it became quiet again.

"We'll never solve anything this way!" Oscar said. "We need a better way to look into this problem."

"Well, what do you suggest?" asked Grundy.

"Yeah, what do you think?" nodded Hannibal.

"I think this is a very hard problem, and that we should think about it very carefully. I suggest that we divide ourselves into committees to study the problem and then, after that, we should meet again to decide what to do."

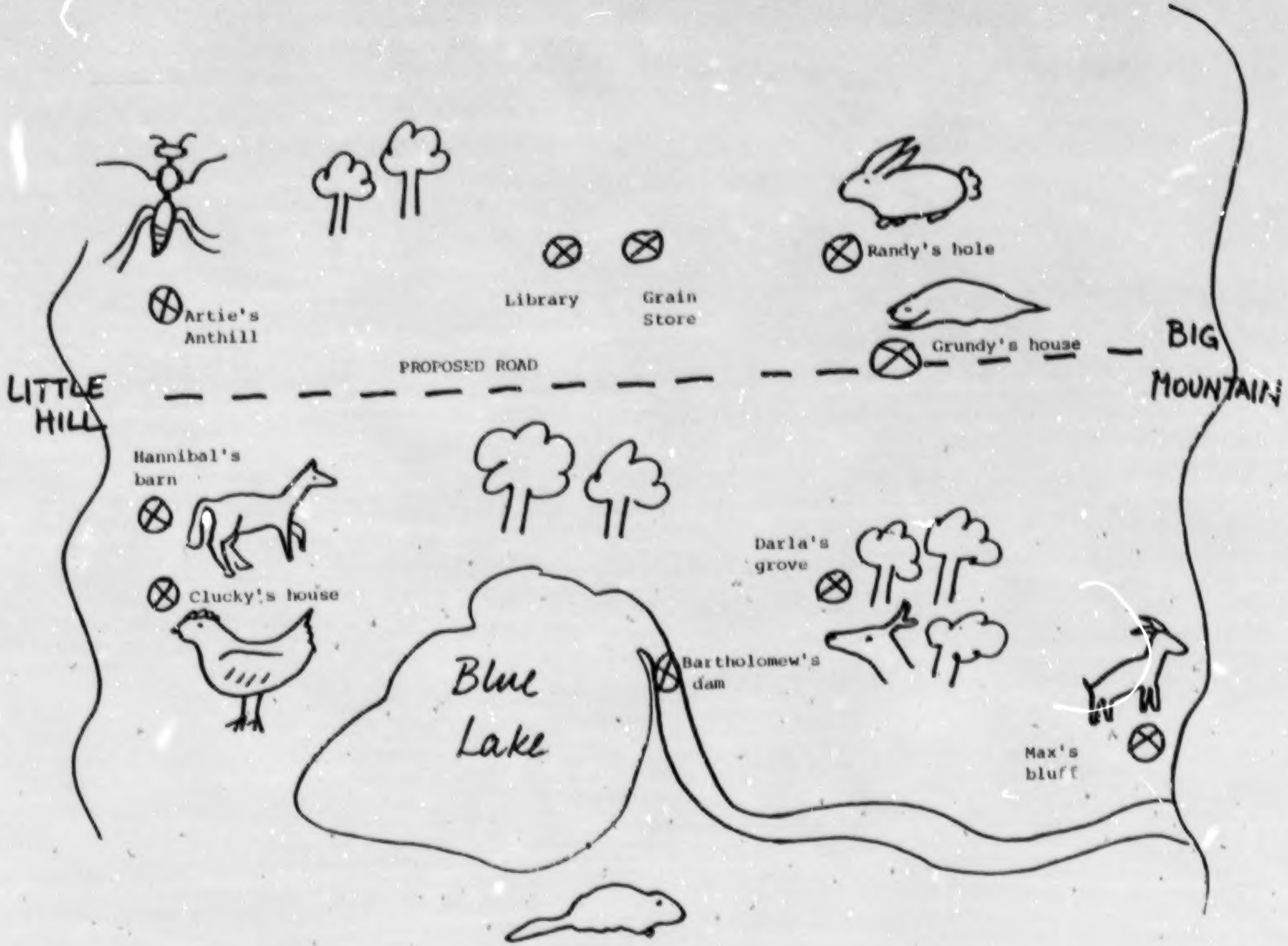
The animals agreed that the idea sounded like a good one. They formed three committees.

Committee number 1 was to try to find out as many facts as possible about the proposed road--where it would go, what animals it would affect, what alternatives were open to animals who would lose their homes- anything known for certain about the road. The committee examined a map showing where the road would go through the valley and interviewed animals who might be affected in some way by the road. They listed all their facts on a big piece of paper.

Committee number 2 was to try to list all the problems that building or not building the road might cause. They interviewed some of the other animals at the meeting and also worked very hard to think of all the problems they could. They too made a list on a big sheet of paper.

The members of Committee number 3 tried to think of all the things the animals might decide to do about the road. They did not worry about what ideas were good or bad or could be carried out--that could be decided later. Instead, they tried to list every single thing the animals might decide to do.

MAP OF GREEN VALLEY


Artie's Anthill
Library
Grain Store
Randy's hole
Grundy's house
BIG MOUNTAIN
LITTLE HILL
PROPOSED ROAD
Hannibal's barn
Clucky's house
Darla's grove
Bartholomew's dam
Blue Lake
Max's bluff

TORTS

The materials in this subsection deal with torts. Handout 64 contains a general definition of a tort and descriptions of the three main types of torts, along with several hypothetical situations that can be used to stimulate questions and discussion. Any of these hypothetical cases can form the basis for a mock civil suit trial. (Suggestions for conducting a mock trial are presented on pages 47-49.) "Who Is to Blame?" is an activity designed to introduce the concept of a tort to elementary students.

Handout 64

WHAT IS A TORT?

A really satisfactory definition of a tort has never been found. The word tort has its basis in Latin (tortus), meaning "twisted," and in French (tort), meaning "wrong." A tort, then, is a civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of a law suit for damages.

It is possible to look at a tort by naming what it is not. A tort is not a crime, it does not concern itself with problems of government, and it is not a breach of contract. But it is not quite that simple, for there are many miscellaneous areas of the law that must be included in what torts are. It can be a direct interference with another person, such as an assault and battery; it can be a direct interference with another's property, such as keeping their lawn mower and not returning it; it can be an invasion of one's privacy, such as falsely accusing a woman of being unchaste; or it can be the negligent injury to another, such as causing an auto accident.

The common thread woven into all torts is the interference with another's interests. It arises out of the clashes between activities of people living in modern society, of people doing those things that constitute modern living. In those activities there will be injuries suffered and losses sustained. The law of torts adjusts those losses and provides for compensation to those injured.

There are three main types of torts:

1. INTENTIONAL TORTS

An intentional tort is an injury caused by the intentional act of another. The intentional hitting of another, the intentional burning of a house, and the intentional breaking of another person's property are examples of this kind of tort. Intentional torts normally require thought to commit the act before it is committed, similar to the intent required to commit certain crimes. In fact, many intentional torts are also crimes.

2. STRICT LIABILITY

This is a no-fault type of tort where just the mere act or injury itself creates liability. There need be no intentional or negligent act. Examples are suffering injuries while riding in a plane or train, or finding a cockroach in an unopened soft drink bottle and drinking from it.

Reprinted with permission from *Student Introduction to Florida Law*, by Bruce W. Flower (Mineola, N.Y.: West Publishing Co., 1978).

3. NEGLIGENT ACTS

A negligent act occurs when a person does not act as an ordinary, reasonable and prudent man would act under similar circumstances. Failing to drive one's car safely, maintaining an unfenced pool or failing to fix a dangerous condition on one's property are all negligent acts.

NEGLIGENCE

Most tort actions today have their base in *negligence*, a careless act that causes injury to another.

The main problem is what act, what behavior is to be considered careless or negligent? To resolve this problem, the law has established a standard of behavior known as the *reasonable man* standard. The "reasonable man" behaves as an ordinary, prudent person with common skill and intelligence would under similar circumstances. A person who behaved or acted as reasonable person would in a similar situation will not be liable. His behavior or action would have been reasonable, and therefore not careless or negligent.

Before a person can be liable for a negligent act, there are four *elements* (parts) that must be proven by the plaintiff:

1. A duty—An obligation to act in such a manner so as not to harm others or expose them to unreasonable risks.
2. A failure of the duty—The defendant's failure to conduct himself as required by 1) above.
3. Proximate cause—A direct relationship or connection between the wrongful act and the injury or damage sustained. In other words, the wrongful act must be the cause of the injury or damage. If the wrongful act was the proximate cause of the injury, the defendant is liable.
4. Actual loss or damage.

There is one other key factor to negligence. It is known as *foreseeability*. Simply stated, if the defendant could not reasonably foresee any injury as the result of his act, there is no negligence, and no liability.

(PROBLEM 2)

Explain the reasonable man standard that should be applied in the following situations.

(a) Wino, the town drunk, gets drunk one night and drives his car through a fence and into a house, injuring the occupants of the house. He claims he was too drunk to know what he was doing.

(b) Ray, a fourth grader, is playing cowboys and Indians with his father's gun. His friend, Al, has a bow and arrow. Ray, thinking the gun was unloaded, aims it at Al and pulls the trigger. The gun fires and Al is seriously injured.

(c) Ray, after the incident with Al is resolved, decides to take his father's motor boat for a joyride. He manages to crash into two other boats before he wrecks another person's dock.

(d) Jake hires Mr. Emmett, a lawyer, to represent him in a criminal case. Emmett makes foolish mistakes that result in Jake's conviction. Jake sues Emmett for malpractice, a form of negligence that applies to people in professional capacities.

Hubbard negligently parked his car. Murray was driving his car and ran into Hubbard's car. Murray sued Hubbard claiming that had it not been for Hubbard's negligently parking his car, the accident would not have happened. Decide.

Joe and Andy are riding in Andy's boat. Andy is piloting the boat in a fast and careless manner. As they approach a bridge too fast, a car drives off the bridge and into the boat, seriously injuring Joe. Joe sues Andy for negligence. Where is the proximate cause in relation to Joe's injury? Why?

A trucker negligently left his truck on the highway at night without flares. A car crashed into it and caught fire. A passerby came to rescue the man and woman in the car. The rescuer wanted to use a floor mat as a pillow for the injured woman. He handed a pistol that was on the mat to the man. The accident, however, had temporarily deranged the man, who then shot the rescuer in the leg. The rescuer sued the trucker. Were the injuries sustained by the rescuer foreseeable? Should the rescuer recover from the trucker? Why?

Helman drove his pickup truck into a railroad crossing. He neither looked nor listened for a train and was completely unaware of a train's approach. The train, however, was traveling at an excessive rate of speed. There was a collision and Helman was severely injured. Was the train's excessive speed the proximate cause of the accident? Why?

WHO IS TO BLAME?

This lesson is designed to introduce elementary students to the concept of a tort.

Begin the lesson by asking the following warm-up questions:

--How many of you have ever played tag with your friends? Where? What was it like?

--Have you ever hurt a friend but it was an accident? What happened?

--Can you name several examples of carelessness?

Distribute copies of Handout 65, "Frances and Molly," and allow time for the students to read it. (With very young students, you may need to read the story aloud to the class.) Ask: Can someone tell us what is going on in this story? Who are the main characters? Then discuss the questions on the handout one at a time. Be sure to give all the students a chance to respond to the questions so that you can determine whether they have different viewpoints about the issue.

At this point the resource person might want to use the situation as the basis of a role-play activity, giving roles to as many students as possible. (See suggestions for using role-play strategies on pages 187 - 89.) After the role play, repeat the probe questions and ask whether any students have changed their minds. Why?

The following story involving a tort case can be used as the basis for an extension activity. Read the story aloud and use the questions to stimulate a follow-up discussion.

> Each summer Larry's family vacationed at a lake cottage. They always took along their boat and a large motor. One day Larry wanted to "show off," so he invited Betty for a ride. Larry knew he was not allowed to operate the motor, but he was sure he would be very careful. Everything went well until Larry went around a bend in the lake and saw a canoe ahead. In a panic Larry swung the boat to avoid the canoe, lost control of the boat, and crashed into a dock. No one was injured, but the dock was severely damaged.

1. Can someone tell us what is going on in this story?
2. What should Larry do?
3. Who should pay for the damage done to the dock?
4. What kind of lawsuit might come out of this case?

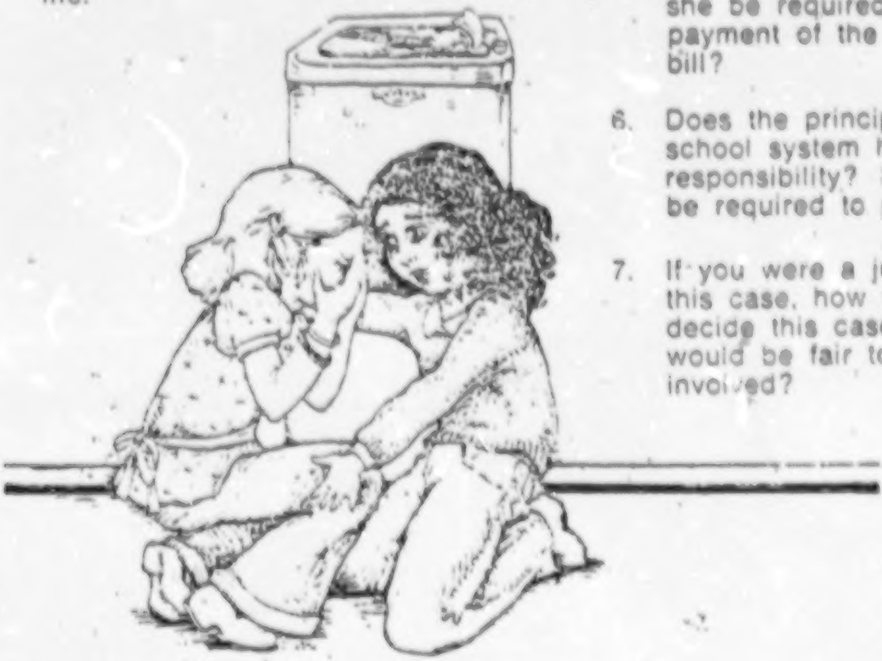
Developed by Faith Haber Galbraith.

Handout 67

FRANCES AND MOLLY

Molly and Frances were 7th graders at Cook School. They asked Ms. Pickett, their teacher, if they could be excused from class to go get a drink of water. Ms. Pickett said yes, but she asked them to be quick about it and not play around.

Frances and Molly walked down the hall, jokingly pushing and shoving each other saying, "got you last." When Frances bent over to take a drink, Molly gave her one last push. It caught Frances off balance and she slipped. Her mouth hit the water spout hard. She cut her lip and chipped three of her front teeth. The dentist bill cost Frances' family a total of $200—and Frances will have capped front teeth for the rest of her life.



QUESTIONS:

1. Even though she did not mean to hurt her friend, was Molly to blame for Frances' injury? Should she be held responsible for Frances' injury?
2. Should Frances' parents sue (demand money) Molly (or her parents) for Frances' injury? Why? Why not?
3. Should Molly's parents be responsible for what Molly did?
4. Suppose Frances was covered by insurance. Do you think this makes any difference?
5. Is Ms. Pickett responsible for Frances' injury? Should she be required to share in payment of the dentist's bill?
6. Does the principal or the school system have any responsibility? Should they be required to pay anything?
7. If you were a judge hearing this case, how would you decide this case so that it would be fair to everyone involved?

Reprinted with permission from *Law in Action: Courts and Trials*, by Linda Riekes and Sally Mahe (Mineola, N.Y.: West Publishing Co., 1975), p. 52.

Part 4: ADDITIONAL RESOURCES

Sources of Legal Education Materials

The resources and activities provided in this handbook represent just a small fraction of the print and nonprint materials available for teaching about the law. This section of the handbook contains a comprehensive list of legal-education resources arranged in four categories: (1) print materials for students, (2) print materials for teachers and resource persons, (3) multimedia kits and filmstrips, and (4) games and simulations.

Because of limited space, we have supplied only the titles of resources and the addresses of publishers. For information about the author(s), grade level, content, format, and price of any given resource, we suggest that you write to the publisher or distributor.

Print Materials for Students

Acropolis Books 2400 17th St. NW Washington, DC 20009	*Law for You*
Allyn & Bacon 470 Atlantic Ave. Boston, MA 02210	*The U.S. Constitution in Perspective*
American Book Co. 135 W. 50th St. New York, NY 10020	*Police and Citizen: Politics of Law and Order*
Paul S. Amidon & Associates 1966 Benson Ave. St. Paul, MN 55116	*Decisions*
Anderson Publishing Co. Suite 501 602 Main St. Cincinnati, OH 45201	About the Law series *The Family* *Landlord-Tenant* *The Law Dictionary*
Argus Communications 7440 Natchez Ave. Niles, IL 60648	*Making Sense of Our Lives* *Television, Police, and the Law*
Atheneum Publishers 122 E. 42nd St. New York, NY 10017	*Victims of Justice*
Avon Books 959 Eighth Ave. New York, NY 10017	American Civil Liberties Union handbooks *Rights of the Poor* *Rights of Servicemen* *Rights of Women*

Ballantine Books 201 E. 50th St. New York, NY 10022	*The Benchwarmers* *Environmental Law Handbook* *The Needs and Rights of Citizens* *The U.S. v. Richard Nixon*
Bantam Books 666 Fifth Ave. New York, NY 10019	*Congress v. the Supreme Court* *The Night Thoreau Spent in Jail*
Barron's Educational Series 113 Crossways Park Drive Woodbury, NY 11797	*The Law, the Supreme Court, and the People's Rights* *The Meaning of the Constitution*
Beacon Press 25 Beacon St. Boston, MA 02108	*You Be the Judge*
Benziger, Bruce & Glencoe 17337 Ventura Blvd. Encino, CA 91316	Constitutional Rights series *Freedom of Expression* *Fair Trial/Free Press* *Juvenile Justice* *Promise of Equality* Criminal Justice Series *Fundamentals of Law Enforcement*
Bobbs Merrill 4300 W. 62nd St. Indianapolis, IN 46206	*The Law and You*
Center for the Study of Democratic Institutions P.O. Box 4068 Santa Barbara, CA 93103	*Introduction to a Constitution for the United Republics of America*
Congressional Quarterly 1414 22nd St. NW Washington, DC 20037	*Crimes and the Law* *Editorial Research Reports: Grand Juries* *The Supreme Court, Justice, and the Law*
Correctional Service of Minnesota 1427 Washington Ave. South Minneapolis, MN 55404	*Insight: A Law-Related Newspaper*
Thomas Y. Crowell Co. 10 E. 53rd St. New York, NY 10022	*Legal First Aid*
Dell Publishing Co. 245 E. 47th St. New York, NY 10017	*Man and Society: Criminal Law at Work* *Man and the World: International Law at Work* *Under 21: A Young People's Guide to Legal Rights*

Encyclopaedia Britannica Educational Corp. 425 N. Michigan Ave. Chicago, IL 60611	*Equality Under Law/Educational Opportunity: The Prince Edward County Case* *Justice Under Law/Right to Counsel: The Gideon Case* *Liberty Under Law/Freedom of Expression: The Feiner Case* *The Supreme Court and Contemporary Issues*
Follett Publishing Co. 1010 W. Washington Blvd. Chicago, IL 60607	*Foundations of Freedom: The Declaration of Independence and the Constitution*
Ginn & Co. 191 Spring St. Lexington, MA 02173	*The American Legal System* *Conflict, Politics, and Freedom* *Justice and Order Through Law* *Juvenile Delinquency* *Teenagers and the Law* *Voices for Justice* *Your Rights and Responsibilities as an American Citizen*
Greenhaven Press 1611 Polk St. NE Minneapolis, MN 55413	*American Justice: Is America a Just Society?* *America's Prisons* Opposing Viewpoints series *The Causes of Crime* *Crime and Criminals* *Dealing With Criminals* *Dealing With White Collar Crime* *Rehabilitation and Reform*
Greenwood Press 51 Riverside Ave. Westport, CT 06880	*The Right to Counsel in American Courts*
Grove Press 196 W. Houston St. New York, NY 10014	*The Bust Book: What to Do Until the Lawyer Comes*
Harper & Row 10 E. 53rd St. New York, NY 10022	*Civil Rights of Lawyers* *Civil Rights of Students*
Houghton Mifflin Co. One Beacon St. Boston, MA 02107	*Civil Liberties Today* Justice in America series Trailmarks of Liberty series *Great Cases of the Supreme Court* *Law in a New Land* *Vital Issues of the Constitution*

Institute for Political/Legal Education 207 Delsea Drive RD 4, Box 209 Sewell, NJ 08080	*Individual Rights: Freedom of Expression--Fair Trial vs. Free Press* *Juvenile Justice* *State Government: The Decision Making Process* *Voter Education*
Law in a Changing Society 7703 N. Lamar Austin, TX 78752	*Law in the Lone Star State*
Learning Systems Co. 1818 Ridge Rd. Homewood, IL 60430	*The Constitution of the United States*
J.B. Lippincott Co. E. Washington Square Philadelphia, PA 19105	*Call Me Counselor*
Littlefield, Adams & Co. 81 Adams Drive Totowa, NJ 07511	*Summaries of Leading Cases on the Constitution* *The Supreme Court in American History* *Tides of Justice: The Supreme Court and the Constitution*
Macmillan Publishing Co. 866 Third Ave. New York, NY 10221	*Law and the Land: Law for Laymen* *Pursuit of Justice*
McDougal, Littell & Co. P.O. Box 1667 Evanston, IL 60204	*Contemporary Concerns: How Laws Are Really Made*
McGraw-Hill Book Co. 1221 Ave. of the Americas New York, NY 10020	*Our Constitution and What It Means*
Charles E. Merrill Publishing Co. 1300 Alum Creek Drive Columbus, OH 43216	*Great Law of Our Land*
National Textbook Co. 8259 Niles Center Rd. Skokie, IL 60076	To Protect These Rights series *Due Process of Law* *Freedom of Speech* *Racial Equality* *Religious Freedom* *Rights of Privacy* *Women and the Law*
New American Library P.O. Box 999 Bergenfield, NJ 07621	*Concerning Dissent and Civil Disobedience*

Newsweek Educational Division 44 Madison Ave. New York, NY 10022	*Due Process of Law* *Legislation* *The Media: Freedom and Responsibility* *Police: Liberty and Order in Conflict* *Politics* *Protest*
Noble & Noble 245 E. 47th St. New York, NY 10017	*Springboards*
Oxford Book Co. 11 Park Place New York, NY 10007	*Youth and the Law*
Oxford University Press 200 Madison Ave. New York, NY 10016	*Judicial Process* *Justices and Presidents: A Political History of the Appointments to the Supreme Court* *The Supreme Court on Racial Discrimination*
Praeger Publishers 200 Park Ave. New York, NY 10017	*Crime and Criminalization* *Politics and Crime*
Project Legal Awareness and Alertness c/o Miles City Schools Washington Middle School Miles City, MT 59301	*Kids, Cops, Courts, and the Law*
Prentice-Hall Englewood Cliffs, NJ 07632	*Law and the American Future* *Law Enforcement in the Criminal Justice System*
Random House 201 E. 50th St. New York, NY 10022	*Clarence Earl Gideon and the Supreme Court* *Defending the Environment: A Handbook for Citizen Action* *Disobedience and Democracy* *No Heroes, No Villains: The Story of a Murder Trial* *Sexist Justice*
William H. Sadlier 11 Park Place New York, NY 10007	*You and the Law*
Scholastic Magazines 50 W. 44th St. New York, NY 10036	*Our Bill of Rights*

Scott, Foresman & Co. 1900 E. Lake Ave. Glenview, IL 60025	*Our Bill of Rights*
Seabury Press 815 Second Ave. New York, NY 10017	*Juvenile Justice*
Silver Burdett Co. 250 James St. Morristown, NJ 07960	*Our Legal Heritage*
Social Issues Resources Series 8141 Glades Rd. Boca Raton, FL 33431	*Corrections* *Crime* *Privacy*
West Publishing Co. 170 Old Country Rd. Mineola, NY 11501	Great Ideas in the Law series Law in Action series *Courts and Trials* *Lawmaking* *The Young Consumer* *Street Law* *Student Introduction to Florida Law*
Xerox Education Publications 1250 Fairwood Ave. P.O. Box 2639 Columbus, OH 43216	*Courts and the Law* *Dissent and Protest* *Liberty Under Law* *The Penal System* *The Police* Public Issues Series *Drugs in Your Life* *Drugs on Our Streets* *The Lawsuit* *Moral Reasoning* *Privacy* *Rights of the Accused* *Social Action* *Taking a Stand* *The Supreme Court* *The Youth Gang*

Print Materials for Teachers and Resource Persons

American Bar Assn. 1155 E. 60th St. Chicago, IL 60637	*Bibliography of Law-Related Curriculum Materials* *Directory of Law-Related Educational Activities* *Gaming: An Annotated Catalogue of Law-Related Games and Simulations*

	A Layman's Handbook of Court Procedures: Legal Education With a Glossary of Legal Terminology *Liberty Under the Law: Anarchy, Totalitarianism; This Is the Choice* *Media* *Standards Relating to Criminal Justice* *Teaching Teachers About Law* *The $$ Game* *These Inalienable Rights*
Anderson Publishing Co. (see Student Materials)	*Changing Adolescent Attitudes Toward Police* *Constitutional Law for Police* *The Juvenile Offender and the Law* *Teaching About the Law*
Barron's Educational Series (see Student Materials)	*Law Dictionary*
Benziger, Bruce & Glencoe (see Student Materials)	*The Bill of Rights: A Handbook for Teachers* *The Bill of Rights: A Sourcebook for Teachers*
Biological Sciences Curriculum Study P.O. Box 930 Boulder, CO 80306	*Rules*
Carroll County Public Schools Westminster, MD 21157	*Involvement: A Practical Handbook for Teachers* (elementary and secondary editions)
Center for Law-Related Education 635 Pharmacy College of Education University of Cincinnati Cincinnati, OH 45221	*Focus on Law* (newsletter)
Center for Teaching International Relations Graduate School of International Studies University of Denver Denver, CO 80208	*Police*
Constitutional Rights Foundation 6310 San Vicente Blvd. Los Angeles, CA 90048	*Bill of Rights Newsletter* *Education for Participation* *Youth and the Administration of Justice*

Sources of Materials	ADDITIONAL RESOURCES
Golden Gate University 536 Mission St. San Francisco, CA 94105	*Law Review* (newsletter)
Goodyear Publishing Co. 1640 Fifth St. Santa Monica, CA 90401	*Law Enforcement and Criminal Justice*
Greenhaven Press (see Student Materials)	*Moral Reasoning*
Law in a Free Society Suite 600 606 Wilshire Blvd. Santa Monica, CA 90401	*Leader's Handbook* *On Authority* (teacher's resource book)
Charles E. Merrill Publishing Co. (see Student Materials)	*Foundations of Justice* *In Search of Justice* (teacher's edition)
Missouri Bar Association 325 Monroe St. Jefferson City, MO 65101	*The Role of Law in Society and the Rights and Responsibilities of Citizenship*
National Education Assn. 1201 16th St. NW Washington, DC 20036	*Values: Law-Related Education and the Elementary School Teacher*
New York State Bar Assn. One Elk St. Albany, NY 12207	*The Criminal Justice System* *Mock Trial Manual*
Open Doors 261 Madison Ave., 10th Floor New York, NY 10016	*The Criminal Justice System*
Social Science Education Consortium 855 Broadway Boulder, CO 80302	*Handbook of Legal Education Resources* *The Methods Book: Strategies for Law-Focused Education* *Teaching About Social Issues in American History: Four Demonstration Lessons* *Who Teaches Citizenship? A Survey of Documents and Resources*
Vermont Education Dept. Montpelier, VT 05602	*Vermont Legal Education Curriculum Guide*
West Publishing Co. (see Student Materials)	*Law Dictionary for Non-Lawyers*

Media Kits and Filmstrips

Channing L. Bete Co. 45 Federal St. Greenfield, MA 01301	*About the Constitution* *About Law* *30 Ways You Can Prevent Crime* *What Everyone Should Know About Shoplifting*
BFA Educational Media 2211 Michigan Ave. P.O. Box 1795 Santa Monica, CA 90406	*Are You Liable?* *Concepts in American Government* *If the Police Stop You. . . .* *Justice Without a Jury* *The Law and Your Work* *Our Constitutional Rights: Landmark Supreme Court Decisions* *Read Before Signing. . . .* *Rights and Responsibilities* *The Usable Law Program* *When I Get to Be 18!*
Center for Humanities Two Holland Ave. White Plains, NY 10603	*Law and Justice: Man's Search for Social Order, Parts 1 and 2*
Changing Times Education Service 1729 H St. NW Washington, DC 20006	*Consumer Law* *Justice in the Marketplace* *Let's Go Shopping* *Typical Gyps and Frauds*
Cooperative Endeavor 500 Zook Bldg. 431 W. Colfax Ave. Denver, CO 80204	On the Spot series *Defending Life and Property* *A Family Disturbance* *Use of Force* *Traffic Contacts* *Citizen Responsibility* *Public Disturbance*
Coronet Instructional Media 65 E.S. Water St. Chicago, IL 60601	*Living With Laws* *The Teenager and the Police: Conflict and Paradox*
Correctional Service of Minnesota (see Student Materials)	*America's Prisons* *Let the Buyer Beware* *A Search for Justice* *Understanding Our Courts*
Current Affairs Films P.O. Box 398 24 Danbury Rd. Wilton, CT 06897	*Criminal Justice: Trial and Error* *The Penal System: Why It Isn't Working* *Privacy Under Attack* *The U.S. Constitution Confronts the Test of Time*

Denoyer-Geppert 5235 Ravenswood Ave. Chicago, IL 60640	*Do We Really Have Freedom of the Press?* *I Had No Choice But to Obey: The War Crimes Controversy*
Doubleday & Co. 245 Park Ave. New York, NY 10022	Consumer Education series *The Law and Your Pocketbook* *The Election Process* *Landmark Decisions of the Supreme Court* *Youth and the Law*
Educational Dimensions Group Box 126 Stamford, CT 06904	*Consumer Education*
EMC Corp. 180 E. Sixth St. St. Paul, MN 55101	*With Justice for All*
Encyclopaedia Britannica Educational Corp. (see Student Materials)	American Consumer series *The Consumer and the Law* *The Consumer and Regulatory Agencies* *The Consumer and Special Interest Groups* Law and Society kit *Law and Lawmakers* *Law and Crime* *Law and Environment* *Law and the Contract* *Law and Youth* Our Living Bill of Rights series *Equality Under Law: The California Fair Housing Cases* *Equality Under Law: The Lost Generation of Prince Edward County* *Freedom to Speak: The People of New York vs. Irving Feiner* *Justice Under Law: The Gideon Case* *The Schempp Case: Bible Reading in Public Schools* *The U.S. Supreme Court: Guardian of the Constitution* Values: Right or Wrong? series *Why Rules?* *What Is Responsibility?* *What Is Honesty?* *Why Play Fair?*

	What Is Yours, What Is Mine? *What Is Appreciating Others?*
Greenhaven Press (see Student Materials)	*American Values*
Guidance Associates 757 Third Ave. New York, NY 10017	Civil Liberties Series: Contemporary Case Studies *A Controversial Film* *Juvenile Thief* *Marijuana Possession* *Open Housing* *Pregnancy in High School* *The Student Press*
	The Fight Against Crime *The Fight for Our Rights*, sets 1 and 2 *First Things: Values* *This Honorable Court: The Supreme Court of the U.S.*
	Law in a Democracy series *Consequences for the Convicted* *The Criminal Court* *Enforcing the Law* *Exploring the Limits of Law* *Shaping the Law*
	Money Well Spent *Privacy: Reexamining a Basic Right*
	Relationships and Values series *Dealing With Authority*
	Themes in Literature series *Conscience and the Law*
	Values in a Democracy series *Legal Issues: What's Right?* *Local Issues: What's Right?* *National Issues: What's Right?*
Law in a Free Society (see Teacher Materials)	*On Authority* *On Privacy*
Learning Corp. of America 1350 Ave. of the Americas New York, NY 10019	Basic Concepts in Social Studies series *Why We Have Laws* *Why We Have Taxes*
Multi-Media Productions P.O. Box 5097 Stanford, CA 94025	*The American Jury: Privilege and Duty* *American Law: Where It Comes From, What It Means* *American Prisons: Rehabilitation or Revenge?*

Sources of Materials	ADDITIONAL RESOURCES
	Freedom of the Press or License to Libel? *Gun Control or Prescription for Dictatorship?* *How Can We Improve Police-Community Relations?* *Prohibition: Can Morality Be Legislated?* *The Supreme Court: Interpreter or Lawmaker?*
National Education Association (see Teacher Materials)	*It's Your Right: The Law Says*
Newsweek Educational Division (see Student Materials)	*Freedom and the Law* *Justice* *Politics of Change*
New York Times Book Division 330 Madison Ave. New York, NY 10017	*Changing Views on Capital Punishment* *Crime and Justice* *The Wheels of Justice*
Pathescope Educational Media 71 Weyman Ave. New Rochelle, NY 10802	*Careers in Law Enforcement* *The Constitution--A Living Document* *Crime: Everybody's Problem* *Enforcing the Law* *Justice and the Law* *Law and Justice for Intermediate Grades* *People at Work* *The Police and the Community* *Protest: Breaking Laws to Change Laws*
Prentice-Hall Media 150 White Plains Rd. Tarrytown, NY 10591	At Issue series *Crime and Punishment* *Dissent* *Invasion of Privacy* *Student Rights* *Youth and the Constitution* *CIA* *Careers in Law Enforcement* The Fight for Our Rights series *Freedom of the Press* *Freedom of Religion* *Freedom of Speech* *The Right to Counsel* *The Right to Go to School* *The Right to Vote* *The Justice Game* *Law and Order: Values in Crisis*

	Origins of the Constitution: The Struggle for Consensus *Our Courts: The Cost of Justice* *Our Right to Privacy* *The Punishment Fits the Crime* *Shoplifting* *Violence and Vandalism in Our Schools*
Random House (see Student Materials)	*Law: The Rules of the Game*
Sunburst Communications 39 Washington Ave. Pleasantville, NY 10570	*Who Gets Baby Marta?*
Society for Visual Education Singer Education Division 1345 Diversey Pkwy. Chicago, IL 60614	*Citizenship Adventures of the Lollipop Dragon* *Freedom: What It's All About* *Rules We Live By*
Teaching Resource Films 357 Adams St. Bedford Hills, NY 10507	*Crime and Justice* *Constitutional Crises and Confrontations*
Xerox Education Publications (see Student Materials)	*The Constitution: One Nation or Thirteen* Fundamental Freedoms program *Fair Trial* *Free Speech and Press* *The Right to Bear Arms* *Search and Seizure* *Juveniles and the Law* *Youth, Crime, and Punishment*

Games and Simulations

Abt Associates 55 Wheeler St. Cambridge, MA 02138	*Innocent Until* *Raid*
Paul S. Amidon & Associates (see Student Materials)	*Bill of Rights* *The Tyranny of Civil Disobedience*
Benziger, Bruce & Glencoe (see Student Materials)	*The Justice Game*
Constitutional Rights Foundation (see Teacher Materials)	*High School* *Integration: The First Year* *Jury Game* *Kids in Crisis* *Liberation* *New School Game*
Correctional Service of Minnesota (see Student Materials)	*The Rehabilitation Game*

Edu-Game P.O. Box 1144 Sun Valley, CA 91352	*Dissent and Protest: The Montgomery Bus Boycott* *The Trial of Harry S. Truman: Crimes Against Humanity*
Ginn & Co. (see Student Materials)	*Ninth Justice*
Greenhaven Press (see Student Materials)	*Planning Tomorrow's Prisons* *Preventing Crime and Violence* *Protecting Minority Rights*
Harwell Associates Box 95 Convent Station, NJ 07961	*Congress*
History Simulations P.O. Box 2775 Santa Clara, CA 95051	*The Haymarket Case* *War Crimes Trials*
Interact Box 262 Lakeside, CA 92040	*Claim* *Constitution* *Espionage: A Simulation of the Rosenbergs' Trial of 1951* *Juris: An Interaction Unit Introducing Contracts, Torts, Juvenile and Criminal Law* *Moot* *Nuremberg* *Rip-Off: A Simulation of Teenage Theft and the Juvenile Hearing Process*
Pennant Educational Materials 8265 Commercial St. Suite 14 La Mesa, CA 92041	*Can of Squirms*
Simile II 218 12th St. P.O. Box 910 Del Mar, CA 92014	*Plea Bargaining* *Police Patrol*
Zenger Publications Gateway Station 802 Culver City, CA 90230	*The Jury Game*

Journal Articles in the ERIC System

This section describes some of the journal articles dealing with using community resources in the classroom which have been entered into the ERIC system. Each document is identified by a six-digit "EJ" number.

If your local library does not have a journal article that you want, you may write for one or more reprints to University Microfilms, 300 North Zeeb Road, Ann Arbor, Michigan 48106. The following information is needed: title of periodical or journal, title of article, author, date of issue, volume number, and number of pages to be copied. A single reprint costs $6.00; there is a $1.00 charge for each additional reprint. All orders must be accompanied by payment in full, plus postage.

Armstrong, David G., and Tom V. Savage. "A Framework for Utilizing the Community for Social Learning in Grades Four to Six." *Social Education* 40, no. 3 (March 1976), pp. 164-67. EJ 133 591.

This article contains a model which shows how the community can become a laboratory in which the learner studies data and makes decisions. In the community laboratory, learners are both participants and observers--which helps them understand why they live as they do and how citizens work together to improve community life.

Blaga, Jeffrey J., and Diane Schempp Boyd. "Studying Government Through Practical Community Encounters." *Social Education* 42, no. 2 (February 1978), pp. 146-47. EJ 174 514.

This journal article describes projects that introduce high school students to the workings of the federal government by directing them to investigate local government functions. The projects involve telephone interviews with local officials, visits to community agencies, and written and oral reports of student experiences.

Buggey, JoAnne. "Citizenship and Community Involvement: The Primary Grades." *Social Education* 40, no. 3 (March 1976), pp. 160-73. EJ 133 590.

This article examines social studies in the primary grades and shows how community resources can facilitate social learning. A three-stage model is examined which addresses the issues of citizenship and community involvement in the primary grades and provides for teacher/school, parent/community, and learner involvement in all states of the development and planning of school/community programs.

Campbell, Lloyd P. "The Community Is the Classroom." *Social Science Record* 23, no. 2 (Winter 1976), pp. 13-14. EJ 141 828.

To encourage secondary social studies teachers to use community resources, the author of this article describes three successful programs of school/community involvement. He also provides suggestions about arranging for field trips, interviews, and guest speakers.

Jones, Ruth. "Student Political Involvement and Attitude Change." *Teaching Political Science* 2, no. 3 (April 1975), pp. 256-274. EJ 118 336.

This article examines the impact and conditions under which student/community involvement influences students' attitudes about political trust, political efficacy, and citizenship obligations.

Kaltsounis, Theodore, ed. "Social Studies and the Elementary Teacher: Introduction." *Social Education* 40, no. 3 (March 1976), pp. 158-59. EJ 133 589.

In this introduction, the author sets the tone for a series of articles intended to stimulate elementary teachers and school personnel to recognize the value of community resources and to make full use of them.

Norflus, David. "Using Community Resources in Economics." *Social Science Record* 14, no. 3 (Spring 1977), pp. 33-35. EJ 161 187.

Methods for using resources from the news media, government, industry, and the community in the school classroom are described in this article.

Seidl, Joan. "A Primer of Community Resources." *Social Education* 39, no. 7 (November/December 1975), pp. 479-481. EJ 126 873.

This article is a guide to general sources that can be put together with local information to explore history and social problems.

Stillman, Susan, and Barbara Jordan. "Open Schools and Citizenship Education Through Involvement in the Community." *Social Education* 40, no. 3 (March 1976), pp. 168-171. EJ 133 592.

The authors explore the ways in which the objectives of open schools and those of contemporary social studies are similar in trying to make the individual a functioning member of society with a high level of participation. They also suggest ways of guiding children in learning activities that emerge from their own interests and of using the community as a resource and laboratory.

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